THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

RECEIVED
Dec 07 2020
SC Court of Appeals

Case No. 2020-000201

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 Ladlessoups Mount Pleasant, LLC, Erik Dyke and Julie Dyke are the Respondents.

AMENDED RECORD ON APPEAL

Ben Le Clercq (S.C. Bar # 65754)
David D. Ashley (S.C. Bar #76206)
Le Clercq Law Firm
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Counsel for Respondents

INDEX

Orders

Order of January 29, 2019 denying Defendants' Motion to Disallow Class Certification ……. 3
Order of January 7, 2020 granting Defendants' Motion for Summary Judgment ……4
Order of January 7, 2020 granting Plaintiff's Motion to Compel ……..... 12

Pleadings

Summons and Verified Complaint (February 14, 2018) ……..15
Ladles Mount Pleasant, LLC, Erik Dyke and Julie Dyke Acceptance of Service (June 18, 2018) ……... .35
Ladles Soups Mount Pleasant, LLC, Erik Dyke and Julie Dyke Answer (June 20, 2018) …….. ……. .37
Defendants' Motion to Disallow Class Certification (July 24, 2018)…….. .42
Plaintiff's Memorandum in Opposition to Motion to Disallow Class Certification (November 26, 2018)…… 49
Plaintiff's Interrogatories (May 24, 2019)……. 57
Plaintiff's Requests for Production (May 24, 2019)…….. 70
Ladles Soups Mount Pleasant, LLC, Erik Dyke and Julie Dyke Motion for Summary Judgment (May 28, 2019)…….. 78
Ladles Soups Mount Pleasant, LLC, Erik Dyke and Julie Dyke Answers to Interrogatories (June 25, 2019)…….. 83
Ladles Soups Mount Pleasant, LLC, Erik Dyke and Julie Dyke Responses to Requests for Production (June 25, 2019)…….. 97
Plaintiff's Motion to Compel (August 22, 2019)……..105
Affidavit of Lani Charpia (August 22, 2019)…….. 108
Plaintiff's Motion for Class Certification (September 11, 2019) ……111
Plaintiff's Amended Motion to Compel (October 4, 2019) …… 171
Plaintiff's Memorandum in Opposition to Ladles Mount Pleasant's Motion for Summary Judgment (October 23, 2019) ……..... 250
Ladles Soups Mount Pleasant, LLC, Erik Dyke and Julie Dyke Memorandum in Support of Motion for Summary Judgment (October 25, 2019) ……..355
Plaintiff's Motion to Reconsider (December 23, 2019) …….. 365

Transcripts

Craig Chappell Deposition Transcript (p. 21, ll. 20- p. 22, ll. 2; p. 21, ll. 20-25; p. 22, ll. 1-2; p. 45, ll. 8-11; p. 60, ll. 23; p. 61, ll. 22-p. 62, ll. 6) (May 14, 2019) ……..... 368
Terri Owens Deposition Transcript (p. 25, ll. 10-25; p. 27, ll. 1-18) (September 13, 2019) …….. 375
Cory Paul Deposition Transcript (p. 32, ll. 1-16; p. 37, ll. 3-5) (September 13, 2019) …….. 378

Julie Dyke Deposition Transcript (p. 9., ll. 13-25; pp. 10-13; p. 20, ll. 4-24;
p. 24, ll. 23-25; p. 25, ll. 1-2; p. 27, ll. 11-25; p. 28, ll. 1-7)
(September 18, 2019) 381
Sue Allen Deposition Transcript (p. 21, ll. 6-25; p. 22, ll. 1-2)
(September 18, 2019) 392
Hearing Transcript (October 29, 2019) 395

Certificate of Counsel 2

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.

December 7, 2020

s/ David D. Ashley

Ben Le Clercq (S.C. Bar # 65754)
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Counsel for Appellant

RECEIVED
Dec 07 2020
SC Court of Appeals

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018-CP-10-00785

RECEIVED
Dec 03 2020
SC Court of Appeals

Craig Chappell
PLAINTIFF(S)

Ladles Soups James Island LLC
DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

FILED
2019 JAN 29 AM 9:24
JULIE J. ARMSTRONG
CLERK OF COURT

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Upon review of the court file, the Plaintiffs, despite filing the present action as a "class action", never moved this court pursuant to SCRCP 23 to certify the class. Therefore, Defendant's Motion to Disallow the Class is DENIED as moot with leave to refile.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

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

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

JMcLay

Circuit Court Judge

2764
Judge Code

1/25/18
Date

ELECTRONICALLY FILED - 2020 Jan 07 11:20 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018-CP-10-00785

Craig Chappell,
PLAINTIFF(S)

Ladles Soups - James Island, LLC, et al.
DEFENDANT(S)

Submitted by: The Court	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☒ Other Confession of Judgment

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

ELECTRONICALLY FILED - 2020 Jan 07 11:20 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**

CLERK OF COURT

Court Reporter:

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

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

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

ELECTRONICALLY FILED - 2020 Jan 07 11:20 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON CRAIG CHAPPELL, on behalf of himself and others similarly situated, Plaintiff(s), v. Ladles Soups – James Island LLC; Ladlessoups, LLC; Ladles Soups At Cane Bay LLC; Ladles Soups At Citadel Mall LLP; Ladles Soups Calhoun LLC; Ladles Soups Cane Bay LLC; Ladles Soups Coosaw LLC; Ladles Soups Downtown Charleston, LLC; Ladlessoups Fresh Fields, LLC; Ladles Soups @ Freshfields Village, LLC; Ladlessoups Mainstreet, LLC; Ladles Soups Moncks Corner LLC; Ladlessoups Mount Pleasant, LLC; Ladles Franchise Development, LLC; Ladles Franchising Inc.; Ladles Fort Mill, LLC; Ladles Knightsville LLC; Ladles West Ashley; Teri Owens; Sue Allen, Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke, Stan Sutton, Carol Sutton, Jason Dalter, Kellie Henderson; Jane Doe 1-25 (Unknown Operating Company and Management Company Owners); John Doe 25-40 (Management Personnel) Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-10-00785 **ORDER ON DEFENDANTS LADLES SOUPS MOUNT PLEASANT, LLC, ERIK DYKE AND JULIE DYKE MOTION FOR SUMMARY JUDGMENT**

HEARING DATE:	October 29, 2019
PLAINTIFF'S COUNSEL:	Ben Le Clerq, Esq. and David D. Ashley, Esq.
DEFENDANT'S COUNSEL:	P. Brandt Shelbourne, Esq.
COURT REPORTER:	Joyce C. Rueger

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

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

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

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

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

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

> Q. As far as you know, Ladles Mount Pleasant was doing it right, as far as you know?
> A. As far as I was told.
> Q. Right. As far as you know?
> A. Correct.
> Q. And so any employees that worked for Ladles Mount Pleasant, as far as you know based on what you were told would have -- would not have any claims because they would have gotten their tips?
> A. Absolutely.

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

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

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

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

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

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

And it is so

ORDERED!

_

Bentley Price
Presiding Judge, Ninth Judicial Circuit

December __, 2019
Charleston, South Carolina

ELECTRONICALLY FILED - 2020 Jan 07 11:20 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

Charleston Common Pleas

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

Case Number: 2018CP1000785

Type: Order/Summary Judgment

IT IS SO ORDERED!

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

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP1000785

Craig Chappell
PLAINTIFF(S)

Ladles Soups James Island LLC et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

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

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

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

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

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2020 Jan 07 9:45 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

Court Reporter:

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

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Charleston Common Pleas

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

Case Number: 2018CP1000785

Type: Order/Electronic Form 4

IT IS SO ORDERED!

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

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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

Plaintiff(s),

v.

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

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-10-

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

SUMMONS

TO THE DEFENDANT NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on Ben Whaley Le Clercq, Attorney, at 708 S. Shelmore Blvd, Suite 202, Mount Pleasant, South Carolina, 29464, within thirty (30) days after the service hereof, exclusive of the

day of such service; and if you fail to answer or appear and defend the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for a judgment by default.

February 14, 2018

Respectfully Submitted,

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

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	CASE NO.:
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.	VERIFIED COMPLAINT TO RECOVER MISAPPROPRIATED TIPS (Class Action) (Jury Trial Demanded)

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

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

PARTIES, JURISDICTION & VENUE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NATURE OF CASE

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

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

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

GENERAL FACTUAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CLASS ACTION ALLEGATIONS

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

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

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

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

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

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

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

a. Whether Class Members worked as service employees in Ladles restaurants;

b. Whether Class Members were paid on an hourly basis plus tips;

c. Whether Defendants illegally refused to pay Plaintiff and Class Members credit card tips they earned, instead unlawfully retaining and converting the same;

d. Whether Defendants have acted or refuse to act on grounds generally applicable to the class;

e. Whether Plaintiffs and the Class Members are entitled to damages, prejudgment interest, attorney's fees and costs from Defendants.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COUNT II
(Class Action – Breach of Contract)

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

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

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

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

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

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

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

COUNT III
(Class Action -- Conversion)

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

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

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

67. Defendants did so without Plaintiffs' permission.

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

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

DEMAND FOR JURY TRIAL

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

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

Le Clercq Law Firm, P.C.

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

VERIFICATION

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

Date: February 2, 2018

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON CRAIG CHAPPELL, on behalf of himself and others similarly situated, Plaintiff(s), v. Ladles Soups – James Island LLC; Ladlessoups, LLC; Ladles Soups At Cane Bay LLC; Ladles Soups At Citadel Mall LLP; Ladles Soups Calhoun LLC; Ladles Soups Cane Bay LLC; Ladles Soups Coosaw LLC; Ladles Soups Downtown Charleston, LLC; Ladlessoups Fresh Fields, LLC; Ladles Soups @ Freshfields Village, LLC; Ladlessoups Mainstreet, LLC; Ladles Soups Moncks Corner LLC; Ladlessoups Mount Pleasant, LLC; Ladles Franchise Development, LLC; Ladles Franchising Inc.; Ladles Fort Mill, LLC; Ladles Knightsville LLC; Ladles West Ashley; Teri Owens; Sue Allen, Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke, Stan Sutton, Carol Sutton, Jason Dalter, Kellie Henderson; Jane Doe 1-25 (Unknown Operating Company and Management Company Owners); John Doe 25-40 (Management Personnel) Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-10-785 ACCEPTANCE OF SERVICE

FILED
2018 JUN 18 PM 4:25
CLERK OF COURT
CHARLESTON, SC

I, P. Brandt Shelbourne, am counsel for the following Defendants in the above styled complaint: (i) Ladlessoups Mount Pleasant, LLC.; (ii) Erik Dyke; (iii) Julie Dyke. I hereby accept service of a filed copy of the Summons and Complaint in the above-captioned action on behalf of these Defendants on this 4st day of June, 2018, and aver that this acceptance constitutes true and valid service upon these Defendants. I received an electronic copy of these documents

filed by Plaintiffs.

P. Brandt Shelbourne, Esq Attorney for Defendants Ladlessoups Mount Pleasant, LLC, Erik Dyke and Julie Dyke

SWORN TO before me this
7th day of JUNE, 2018.

(LS)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: June 28 2027

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON CRAIG CHAPPELL, on behalf of himself and others similarly situated, Plaintiff(s), v. Ladles Soups – James Island LLC; Ladlessoups, LLC; Ladles Soups At Cane Bay LLC; Ladles Soups At Citadel Mall LLP; Ladles Soups Calhoun LLC; Ladles Soups Cane Bay LLC; Ladles Soups Coosaw LLC; Ladles Soups Downtown Charleston, LLC; Ladlessoups Fresh Fields, LLC; Ladles Soups @ Freshfields Village, LLC; Ladlessoups Mainstreet, LLC; Ladles Soups Moncks Corner LLC; Ladlessoups Mount Pleasant, LLC; Ladles Franchise Development, LLC; Ladles Franchising Inc.; Ladles Fort Mill, LLC; Ladles Knightsville LLC; Ladles West Ashley; Teri Owens; Sue Allen, Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke, Stan Sutton, Carol Sutton, Jason Dalter, Kellie Henderson; Jane Doe 1-25 (Unknown Operating Company and Management Company Owners); John Doe 25-40 (Management Personnel) Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-10-00785 **ANSWER ON BEHALF OF LADLES SOUPS OF MOUNT PLEASANT, LLC, ERIK DYKE AND JULIE DYKE** **(Jury Trial Demanded)**

FILED
2018 JUN 20 AM 11:25
JULIE J. ARMSTRONG
CLERK OF COURT

6/20/18

TO: CRAIG CHAPPELL, on behalf of himself and others similarly situated, and their attorney Benjamin Scott Whaley Le Clercq, Esquire:

Defendants, Ladlessoups Mount Pleasant LLC, Erik Dyke and Julie Dyke, (hereinafter referred to as "Defendants") replies to Plaintiff Craig Chappell on behalf of himself and others similarly situated (hereinafter referred to as "Plaintiffs") Summons and Verified Complaint to Recover Misappropriated Tips herein states and alleges as follows:

AS AND FOR A FIRST DEFENSE
(General Denial)

1. Unless otherwise admitted, Defendants deny all of the allegations contained in Plaintiff's Complaint and demand strict proof thereof.

2. Defendants have no independent information as to the allegations contained in Paragraph 1 of Plaintiff's Complaint and therefore deny the same and demand strict proof thereof.

3. Defendants deny those allegations contained in Paragraphs 2 and 3 of Plaintiff's Complaint, and demand strict proof thereof.

4. Defendants have no independent information as to the allegations contained in Paragraph 4 of Plaintiff's Complaint and therefore deny the same and demand strict proof thereof.

5. Defendants deny those allegations contained in Paragraphs 5 through 11 of Plaintiff's Complaint, and demand strict proof thereof.

6. Defendants have no independent information as to the allegations contained in Paragraph 12 of Plaintiff's Complaint and therefore deny the same and demand strict proof thereof.

7. Defendants deny those allegations contained in Paragraph 13 of Plaintiff's Complaint, and demand strict proof thereof.

8. Defendants have no independent information as to the allegations contained in Paragraph s 14 through 18 of Plaintiff's Complaint and therefore deny the same and demand strict proof thereof.

9. Defendants admit those allegations contained in Paragraph 19 of Plaintiff's Complaint.

10. Defendants deny those allegations contained in Paragraphs 20 through 22 of Plaintiff's Complaint, and demand strict proof thereof.

11. Defendants have no independent information as to the allegations contained in Paragraphs 23 through 26, and therefore deny the same and demand strict proof thereof.

12. Defendants deny those allegations contained in Paragraph 27 of Plaintiff's Complaint, and demand strict proof thereof.

13. Defendants have no independent information as to the allegations contained in Paragraph 28, and therefore deny the same and demand strict proof thereof.

14. Defendants deny those allegations contained in Paragraphs 29 and 30 of Plaintiff's Complaint, and demand strict proof thereof.

15. Defendants have no independent information as to the allegations contained in Paragraphs 31 through 34, and therefore deny the same and demand strict proof thereof.

16. Defendants deny those allegations contained in Paragraphs 35 through 44 of Plaintiff's Complaint, and demand strict proof thereof.

17. Defendants have no independent information as to the allegations contained in Paragraph 45, and therefore deny the same and demand strict proof thereof.

18. In response to Paragraph 46 of Plaintiff's Complaint Defendants repeat each and every allegation set forth above as if set out fully verbatim herein.

19. Defendants deny those allegations contained in Paragraphs 47 and 48 of Plaintiff's Complaint, and demand strict proof thereof.

20. Defendants have no independent information as to the allegations contained in Paragraph 49, and therefore deny the same and demand strict proof thereof.

21. Defendants deny those allegations contained in Paragraphs 50 through 52 of Plaintiff's Complaint, and demand strict proof thereof.

22. Defendants have no independent information as to the allegations contained in Paragraph 53, and therefore deny the same and demand strict proof thereof.

23. Defendants deny those allegations contained in Paragraphs 54 through 56 of Plaintiff's Complaint, and demand strict proof thereof.

24. In response to Paragraph 57 of Plaintiff's Complaint Defendants repeat each and every allegation set forth above as if set out fully verbatim herein.

25. Defendants deny those allegations contained in Paragraphs 58 through 63 of Plaintiff's Complaint, and demand strict proof thereof.

26. In response to Paragraph 64 of Plaintiff's Complaint Defendants repeat each and every allegation set forth above as if set out fully verbatim herein.

27. Defendants deny those allegations contained in Paragraphs 65 through 68 of Plaintiff's Complaint, and demand strict proof thereof.

AS AND FOR A SECOND DEFENSE
(Failure to Meet the Burdens of SCRCP 23)

28. Defendants repeat each and every allegation set forth above as if set out fully verbatim herein.

29. Plaintiff's complaint and the allegations therein fail to meet the requirements of SCRCP 23.

AS AND FOR A THIRD DEFENSE
(Statute of Limitations)

30. Defendants repeat each and every allegation set forth above as if set out fully verbatim herein.

31. Plaintiff's complaint is filed outside the statute of limitations.

AS AND FOR A FOURTH DEFENSE
(Judgement on the Pleadings Pursuant to SCRCP 12(b)(6))

32. Defendants repeat each and every allegation set forth above as if set out fully verbatim herein.

33. Plaintiff's complaint fails to state sufficient facts upon which relief may be granted and these Defendants are entitled to judgment pursuant to SCRCP 12(b)(6).

AS AND FOR A FIFTH DEFENSE
(Judgment on the Pleadings Pursuant to SCRCP 12(c))

34. Defendants repeat each and every allegation set forth above as if set out fully verbatim herein.

35. Defendants are entitled to judgment on the pleadings pursuant to SCRCP 12(c).

AS AND FOR A SIXTH DEFENSE
(Individualized Issues Preclude Class Certification)

36. Defendants repeat each and every allegation set forth above as if set out fully verbatim herein.

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

WHEREFORE, Defendants Ladlessoups Mount Pleasant LLC, Erik Dyke and Julie Dyke pray unto this Honorable Court as follows;

a) for an Order dismissing Plaintiff Craig Chappell on behalf of himself and others similarly situated Complaint; and

b) for an award of attorney's fee and costs; and

c) for such other and further relief as this Court deems just and proper.

RESPECTFULLY SUBMITTED,

By: _____

P. Brandt Shelbourne, Esquire (SCB 15143)
SHELBOURNE LAW FIRM
131 E. Richardson Avenue
Summerville, SC 29483
(843) 871-2210
ATTORNEYS FOR DEFENDANTS LADLES SOUPS OF MOUNT PLEASANT, LLC, ERIK DYKE AND JULIE DYKE

June 15, 2018
Summerville, South Carolina

Certificate of Service

The undersigned hereby certifies that the foregoing was served upon opposing counsel via first class mail with sufficient postage affixed hereto on this 15 day of June, 2018.

_____
Shannon Haik, Paralegal

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON CRAIG CHAPPELL, on behalf of himself and other similarly situated Plaintiff, vs. Ladles Soup – James Island LLC, et al. Defendant.	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-10-00785 **MOTION AND ORDER INFORMATION** **FORM AND COVERSHEET**

Plaintiff's Attorney:	Defendant's Attorney:
Benjamin Le Clercq, Bar No. _____ Address: 708 South Shelmore Blvd., #202, Mount Pleasant, SC 29464 Phone: 843-722-3523Fax 843-352-2977 E-mail: ben@leclercqlaw.comOther: _____	Paul B. Ferrara, III, Bar No. 70511 Address: 2300 Otranto Rd, North Charleston, SC 29406 Phone: 843-569-5511 Fax843-569-5411 E-mail: paul@ferraralawfirm.netOther: _____

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

SECTION I: Hearing Information

Nature of Motion: Motion to disallow class
Estimated Time Needed: 30 minutes Court Reporter Needed: ☐ YES / ☒ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

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

_____ 7-17-18
Signature of Attorney for ☐ Plaintiff / ☐ Defendant Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: $_____
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

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

Plaintiff(s),

v.

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

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-10-00785

NOTICE OF MOTION AND MOTION TO DISALLOW CLASS CERTIFICATION

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

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

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

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

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

(Signature Page to Follow)

FERRARA LAW FIRM, PLLC

Paul B. Ferrara, III attorney for:
Steven Traeger, Traeger Unlimited, d/b/a Ladlessoups Fresh Fields, LLC, Ladles Franchise Development, LLC, Ladles Soups @ Freshfields Village, LLC, Ladles Soup Downtown Charleston, LLC, Ladles Soups-James Island, LLC, Dan Sutton, Carol Sutton, Ladles Soups Moncks Corner, LLC, Ladles Knightsville, LLC, Teri Owens, Ladles West Ashley, and Ladles Fort Mill, LLC,
2300 Otranto Road
North Charleston, SC 29406
843-569-5511
843-569-5411 fax
paul@ferraralawfirm.net

July 17, 2018
North Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-10-00785

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

Plaintiff(s),

v.

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

Defendants.

AFFIDAVIT OF SERVICE

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

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

1. That she is an employee in the office of Ferrara Law Firm, attorneys for the defendant herein;

2. That on the 17th day of July, 2018 she did via U.S. mail give a true and correct copy of the foregoing Motion to Dismiss, Motion to Disallow Class Certification and Motion Coversheet by mailing a copy to:

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

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

Jessica Weiss
Paralegal to Paul B. Ferrara, III

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

Janel K Ferrara (L.S.)
Notary Public for South Carolina
My Commission Expires: 2/10/2025

JANEL K. FERRARA
Notary Public-State of South Carolina
My Commission Expires
February 10, 2025

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	CASE NO.: 2018-CP-10-785
CRAIG CHAPPELL, on behalf of himself and others similarly situated, Plaintiff(s), v. Ladles Soups – James Island LLC; Ladlessoups, LLC; Ladles Soups At Cane Bay LLC; Ladles Soups At Citadel Mall LLP; Ladles Soups Calhoun LLC; Ladles Soups Cane Bay LLC; Ladles Soups Coosaw LLC; Ladles Soups Downtown Charleston, LLC; Ladlessoups Fresh Fields, LLC; Ladles Soups @ Freshfields Village, LLC; Ladlessoups Mainstreet, LLC; Ladles Soups Moncks Corner LLC; Ladlessoups Mount Pleasant, LLC; Ladles Franchise Development, LLC; Ladles Franchising Inc.; Ladles Fort Mill, LLC; Ladles Knightsville LLC; Ladles West Ashley; Teri Owens; Sue Allen, Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke, Stan Sutton, Carol Sutton, Jason Dalter, Kellie Henderson; Jane Doe 1-25 (Unknown Operating Company and Management Company Owners); John Doe 25-40 (Management Personnel) Defendants.	PLAINTIFF'S RESPONSE TO DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISALLOW CLASS CERTIFICATION

FILED IN OFFICE OF CLERK OF COURT
2018 NOV 26 PM 12:05

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

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

As of the date of filing of this memorandum, Defendants have not provided a memorandum of law supporting their Motion. Without more, the motion is subject to denial on that basis alone, since there is no citation to authority. The Motion argues in a general, perfunctory manner five reasons to disallow class certification: Plaintiff failed to show (1) the class was tailored narrowly; (2) numerosity was met; (3) commonality was met; (4) typicality was met; and (5) that each class member sought relief exceeding $100.[1]

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

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

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

Rule 23, 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 requirements. To the contrary, Rule 23 requires analysis of i) Numerosity, ii) commonality, iii) typicality, iv) representativeness, and v) amount in controversy.

II. PLAINTIFF SHOWED NUMEROSITY

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

[1] Defs.' Mot. Disallow Class Cert. at 2.

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

III. PLAINTIFF SHOWED COMMONALITY

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

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

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

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[3] Compl. at para. 37.
[4] Rule 23(a)(1), SCRCP.
[5] Gardner v. South Carolina Dept. of Revenue, 353 S.C. 1, 21, 577 S.E.2d 190 (2003).
[6] Id.

Nevertheless, in McGann v. Mungo[7] the plaintiffs were residents of one subdivision alleging that various defendants with no legal relationship caused damages to homes and vehicles due to poor drainage system performance.[8] Ruling on defendants' argument that Rule 23(a)(2), 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]."[9] The court stated, "Obviously, the allegations of the amended complaint satisfy the pleading requirements of Rule 23(a)(2), which we also apply retrospectively, as to a community of interest among the members of the alleged class in the questions of law and fact involved."[10] Although it didn't deal with a common scheme executed by multiple defendants, McGann's holding of sufficient commonality under the class-action rules, despite multiple defendants each of whom allegedly damaged not the entire class but only portions thereof, supports the argument that employees of various franchises suffered under a common misappropriation of their wages.

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

[7] McGann v. Mungo, 287 S.C. 561, 340 S.E.2d 154 (Ct. App. 1985).
[8] McGann v. Mungo, 287 S.C. 561, 565 340 S.E.2d 154, 156 (Ct. App. 1985).
[9] McGann v. Mungo, 287 S.C. 561, 568 340 S.E.2d 154, 158 (Ct. App. 1985).
[10] McGann v. Mungo, 287 S.C. 561, 568 340 S.E.2d 154, 158 (Ct. App. 1985).
[11] Littlefield v. SC FORESTRY COM'N, 337 S.C. 348, 523 S.E.2d 781 (1999).
[12] Littlefield v. SC FORESTRY COM'N, 337 S.C. 348, 355, 523 S.E.2d 781 (1999

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

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

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

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

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[13] Littlefield v. SC FORESTRY COM'N, 337 S.C. 348, 354, 523 S.E.2d 781 (1999) ("[W]e see no reason the circuit court could not, as urged by plaintiffs, have redefined the class to include only former employees.") (citing McGann).
[14] Compl. (three counts for violation of Payment of Wages Act, breach of contract, and conversion).
[15] Id. at para. 13.
[16] Compl. at paras. 38(a)-(d).
[17] Id. at 38(c), (e).

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

IV. PLAINTIFF SHOWED TYPICALITY

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

PLAINTIFF SHOWED EACH MEMBER SEEKS MORE THAN $100

Plaintiff alleged this.[35]

[34] Rule 23(a)(3), SCRCP.
[35] Compl. at para. 44.

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

November 23, 2018

Respectfully Submitted,

s/Ben Whaley Le Clercq Ben LeClercq By direction Scott Riddell 11/26/18 Scott Riddell

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

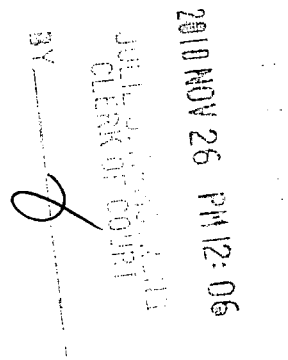
2018-CP-10-0785

CERTIFICATE OF SERVICE

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

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

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



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

s/Ben Le Clercq Ben Le Clercq

Ben Le Clercq

By direction
Scott Riddell
11/26/18
Scott Riddell

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

PLAINTIFFS'] FIRST INTERROGATORIES

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

INSTRUCTIONS AND DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

INTERROGATORIES

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

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

   a. The kind of insurance, indemnity or bond;

b. The name of the company or companies, including any excess or umbrella carriers, which you claim provide coverage;

c. The policy number or policies numbers of any applicable policy;

d. The limit or limits of liability of each policy.

e. The named insured of each policy.

f. Whether the insurance carrier has accepted or denied coverage.

g. Whether you are being defended by the insurance carrier under a reservation or rights.

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

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

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

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

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

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

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

b. detailed summary of the expert's opinions regarding this case and the basis for them;

c. summary of the expert's knowledge, skill, experience, training, or education as it applies to the specific field of expertise alleged in this case;

d. description of the claims and lawsuits in which the expert has given opinions, including the names and addresses of the parties and their attorneys, and the location of any depositions and recorded statements the expert has given in cases other than this one;

e. the percentage of expert's practice devoted to consulting work in legal claims, the percentage attributable to the claimant/plaintiff as opposed to the defendant, and the amount of income derived from such consulting in the last 2 years;

f. the specifics of any publication in speaking engagements given by the expert on matters relating to the expert's profession; and

g. the names of publications considered by the expert to be learned treatises as described in the Federal or South Carolina rule of evidence 803(18).

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

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

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

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

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

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

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

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

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

a. How were you named in the lawsuit (e.g. plaintiff, defendant, intervenor, etc.)?

b. What was the nature of each claim and defense?

c. The date, location, and title of the court in which the action was commenced.

d. The names of all the parties other than yourself involved in the action.

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

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

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

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

a. The name listed in the current articles of organization;

b. All of the names used by the company during the past 10 years and the dates each was used;

c. The name and address of each member;

d. The name and address of each manager;

e. The date and place of formation;

f. The address of the principal place of business; and

g. The states in which it is registered to do business.

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

a. all financial accounts, including bank, checking, savings, money market, investment, and/or securities accounts currently held by or for your benefit, and state current balances, location of the accounts, and name on accounts;

b. any and all certificates of deposit, stock certificates in any publicly held or closely held corporation, as well as any bonds owned by each and every Defendant, membership interest in any and all limited liability companies, partnership interest in any and all partnerships, and any and all interest in any other form of business entity, including joint ventures, whether domestic or offshore, detailing without limitation and with particularity percentages of ownership, amount of revenue generated for each entity, etc.

c. any and all titles to vehicles, mobile homes, or watercraft owned by each and every Defendant, detailing a description of each item including year, model, serial number, vehicle identification number, present value and the amount of any lien thereon;

d. any and all deeds, mortgages, notes, contracts of sale, and settlement or closing statements relating to any real estate transactions involving each and every Defendant;

e. any and all real property, including without limitation (county, state, jurisdiction), whether domestic or offshore for each and every Defendant;

f. any and all life insurance policies owned by each and every Defendant, along with any information pertaining to any loans outstanding on any such policies;

g. any and all items of jewelry or art owned by each and every Defendant, including a description of each item and its most recent appraised valuation;

h. any and all leases of realty or personalty in favor of each and every Defendant;

i. any and all books, records, documents, or writings concerning the financial status of Defendants not herein before specified, including any and all interest in any form of trust; and

j. any and all tax receipts, tax returns or supplemental forms, and any and all other documents, forms or letters filed with United States Internal Revenue Service, and any other state tax authority within the last 5 years.

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

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

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

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

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

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

29. Does Respondent have an employee handbook?

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

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

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

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

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

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

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

37. Describe Respondent's accounting software.

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

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

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

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

Respectfully submitted,

s/Ben Le Clercq

_____

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

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

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

s/Debbie Matthews

_____

Debbie Mathews

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	CASE NO.: 2018-CP-10-785
CRAIG CHAPPELL, on behalf of himself and others similarly situated, Plaintiff(s), v.	PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION
Ladles Soups – James Island LLC; Ladles Soups, LLC; Ladles Soups At Cane Bay LLC; Ladles Soups At Citadel Mall LLP; Ladles Soups Calhoun LLC; Ladles Soups Cane Bay LLC; Ladles Soups Coosaw LLC; Ladles Soups Downtown Charleston, LLC; Ladles Soups Fresh Fields, LLC; Ladles Soups @ Freshfields Village, LLC; Ladles Soups Mainstreet, LLC; Ladles Soups Moncks Corner LLC; Ladles Soups Mount Pleasant, LLC; Ladles Franchise Development, LLC; Ladles Franchising Inc.; Ladles Fort Mill, LLC; Ladles Knightsville LLC; Ladles West Ashley; Teri Owens; Sue Allen, Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke, Stan Sutton, Carol Sutton, Jason Dalter, Kellie Henderson; Jane Doe 1-25 (Unknown Operating Company and Management Company Owners); John Doe 25-40 (Management Personnel) Defendants.	

PLAINTIFFS' FIRST REQUESTS FOR PRODUCTION

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

INSTRUCTIONS AND DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

REQUESTS FOR PRODUCTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Respectfully submitted,

s/Ben Le Clercq

_____

Ben Le Clercq
(S.C. Bar #65754, U.S. District Court # 7453)
Scott Riddell
(S.C. Bar #102809, U.S. District Court #12543)
Le Clercq Law Firm
708 South Shelmore Blvd. #202
Mount Pleasant, SC 29464
Phone (843) 722-3523
Fax (843) 352-2977
Ben@LeClercqLaw.com
Scott@LeClercqLaw.com
Counsel for Plaintiff

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

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

s/Debbie Matthews

_____

Debbie Mathews

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	CASE NO.: 2018-CP-10-00785
	)	
Craig Chappell, on behalf of himself and other similarly situated	)	**MOTION AND ORDER INFORMATION**
Plaintiff,	)	**FORM AND COVERSHEET**
vs.	)	
	)	
Ladles Soups-James Island LLC, et al.	)	
Defendant.	)	

Plaintiff's Attorney:	Defendant's Attorney:
Benjamin LcClerq, Esq , Bar No. _____ Address: 708 S. Shelmore Blvd., # 202 Mt. Pleasant, SC 29464 Phone: 843-722-3523Fax 843-352-2977 E-mail: ben@leclercqlaw.comOther: _____	P. Brandt Shelbourne, Bar No. 15143 Address: 131 S. Richardson Ave. Summerville, SC 29483 Phone: 843-871-2210 Fax843-875-2224 E-mail: brandt@shelbournelaw.comOther: _____

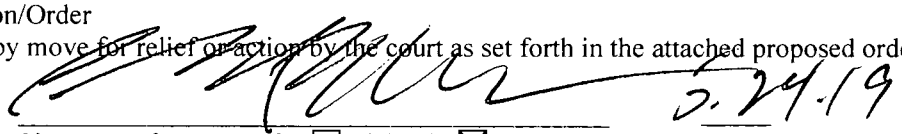
☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion for Summary Judgment
Estimated Time Needed: 30 Court Reporter Needed: ☒ **YES**/☐ **NO**

SECTION II: Motion/Order Type

☐ Written motion attached
☐ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.



Signature of Attorney for ☐ Plaintiff /☒ Defendant Date submitted 5.24.19

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE CODE _____
☐ Other: _____	Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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

Plaintiff(s),

v.

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

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-10-00785

DEFENDANTS LADLES SOUPS OF MOUNT PLEASANT, LLC, ERIK DYKE AND JULIE DYKE MTOION FOR SUMMARY JUDGMENT

FILED
2019 MAY 28 PM 1:14
JULIE J. ARMSTRONG
CLERK OF COURT
BY

PLEASE TAKE NOTICE Defendants, Ladlessoups Mount Pleasant LLC, Erik Dyke and Julie Dyke, (hereinafter referred to as "Defendants") hereby move this court within 10 days or as soon thereafter as may be heard for Summary Judgment on all of Plaintiff's causes of action against Defendants pursuant to Rule 56 of the South Carolina Rules of Civil Procedure on the grounds that taking all the facts and inferences arising therefrom there is not even a scintilla of

evidence to support Plaintiff's claims against said defendants. This motion will be supported by such memoranda of law as maybe filed, deposition testimony and affidavits.

Defendants Dyke are the sole owners and members of Ladles Soups Mount Pleasant. Ladles is an independent LLC owned by the Dykes. The Dykes purchased a franchise from co-Defendant Ladles Franchising Inc., but that entity has no control or oversight of Defendants' business. Plaintiff initiated this lawsuit on February 14, 2018 by filing suit against defendants as well as fifteen (15) Ladles Soup stores and ten (10) named individuals and an unknown number of Jane and John Does. Central to Plaintiff's suit is the allegation that Defendants failed to pay him wages and failed to adequately turn over tips paid on credit card charges made a Defendants' restaurants. Plaintiff has alleged causes of action for Nonpayment of Wages Under S.C. Code § 41-10-40; Breach of Contract and Conversion. However, Plaintiff has never been in a contractual relationship with Defendants and has never even been in Defendants' business. Plaintiff admits that Defendants have never taken anything from Plaintiff. Further, Plaintiff does not know why Defendants are even in the lawsuit. According to Plaintiff's testimony, Defendants' business is the only one of the Ladles Soups' business that was allegedly handling the charged tips properly and should not be included in the suit.

RESPECTFULLY SUBMITTED,

By: _____

P. Brandt Shelbourne, Esquire (SCB 15143)
SHELBOURNE LAW FIRM
131 E. Richardson Avenue
Summerville, SC 29483
(843) 871-2210
ATTORNEYS FOR DEFENDANTS LADLES SOUPS OF MOUNT PLEASANT, LLC, ERIK DYKE AND JULIE DYKE

May 2nd, 2019

Summerville, South Carolina

2018-CP-10-785

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Shelbourne Law, do hereby certify that a true and correct copy of Defendants Ladles Soups of Mount Pleasant, LLC, Erik Dyke and Julie Dyke Motion for Summary Judgment which this certificate is affixed was served upon the following parties via hard copy and/or electronic mail to the following:

Ben LeClercq, Esq. LeClerq Law Firm 708 South Shelmore Blvd., Ste.202 Mount Pleasant, SC, 29406 *Attorney for Plaintiff*	Kerry Koon, Esq. 147 Wappoo Creek Dr. Wappoo Centre, Suite 203 Charleston, SC 29491 kerrykoon@hotmail.com *Attorney for Defendants, Ladles Franchising, Inc.; Ladessoups, LLC, and Tracy Allen*
Paul B. Ferrara, III, Esq. Ferrara Law 8887 Old University Blvd. 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*	FILED 2019 MAY 28 PM 1:15 JULIE J. ARMSTRONG CLERK OF COURT BY

Date: May 24, 2019

Yvonne Franklin, Paralegal at Shelbourne Law

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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

Plaintiff(s),

v.

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

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-10-00785

LADLES SOUPS OF MOUNT PLEASANT, LLC, ERIK DYKE AND JULIE DYKE RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

TO: CRAIG CHAPPELL AND HIS ATTORNEY BENJAMIN LE CLERCQ, ESQ.:

Defendants, Ladles Soups Mount Pleasant LLC, Erik Dyke and Julie Dyke, (hereinafter referred to as "Defendants") by and through their undersigned counsel, respond to Plaintiff, Craig Chappell's First Set of Interrogatories as follows:

INTERROGATORIES

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

Response:

Erik Dyke
c/o Shelbourne Law
131 E. Richardson Ave
Summerville, SC 29483

Mr. Dyke is the owner and franchisee of Ladles Soups Mount Pleasant in the above captioned action and is expected to testify regarding his knowledge of the facts and circumstances in the pleadings. Upon information and belief, Mr. Dyke has not made any written or recorded statements regarding this matter beyond those found in its pleadings, discovery responses or documents in this matter.

Julie Dyke
c/o Shelbourne Law
131 E. Richardson Ave
Summerville, SC 29483

Mrs. Dyke is a co-owner and franchisee of Ladles Soups Mount Pleasant in the above captioned action and is expected to testify regarding her knowledge of the facts and circumstances in the pleadings. Upon information and belief, Mrs. Dyke has not made any written or recorded statements regarding this matter beyond those found in its pleadings, discovery responses or documents in this matter

2. Does Respondent have liability insurance, or is there any other form of indemnity or bond, through which Respondent is or might be insured in any manner for the damages, claims,

or actions that are the subject of the pleadings? If so, please provide the following information for each policy:

a. The kind of insurance, indemnity or bond;

b. The name of the company or companies, including any excess or umbrella carriers, which you claim provide coverage;

c. The policy number or policies numbers of any applicable policy;

d. The limit or limits of liability of each policy.

e. The named insured of each policy.

f. Whether the insurance carrier has accepted or denied coverage.

g. Whether you are being defended by the insurance carrier under a reservation or rights.

Response: **Defendant does not have any applicable insurance.**

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

Response: **In response to Interrogatory number 3, Defendants adopt and reiterate their response to Interrogatory number 1.**

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

Response: **Defendants Erik Dyke and Julie Dyke.**

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

Response: **Plaintiff alleged that that Defendants failed to pay him wages and failed to turn over tips paid on credit card charges. Plaintiff has not had a contractual relationship with Defendants nor has Plaintiff ever been employed by the Defendant's. Plaintiff admitted in his deposition that Defendants did not take anything from him. Further, Defendants have never withheld credit card tips from employees.**

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

Response: **Defendants do not know of any factual basis for Plaintiff's causes of action.**

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

Response: **Defendants have attached all documents in their possession at this time. Defendants reserve the right to supplement their answers to Plaintiff's Interrogatories as more information is obtained through the discovery process.**

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

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

b. detailed summary of the expert's opinions regarding this case and the basis for them;

c. summary of the expert's knowledge, skill, experience, training, or education as it applies to the specific field of expertise alleged in this case;

d. description of the claims and lawsuits in which the expert has given opinions, including the names and addresses of the parties and their attorneys, and the location of any depositions and recorded statements the expert has given in cases other than this one;

e. the percentage of expert's practice devoted to consulting work in legal claims, the percentage attributable to the claimant/plaintiff as opposed to the defendant, and the amount of income derived from such consulting in the last 2 years;

f. the specifics of any publication in speaking engagements given by the expert on matters relating to the expert's profession; and

g. the names of publications considered by the expert to be learned treatises as described in the Federal or South Carolina rule of evidence 803(18).

Response: **Defendants have not obtained an expert witness at this time but reserve the right to supplement their answers to Plaintiff's Interrogatories as more information is obtained through the discovery process. Defendants will reply on any expert retained by the other Defendants or Plaintiff in this case and all written responses to the discovery listing them as experts.**

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

Response: **Defendants are not aware of any party improperly identified, other than Defendants should not be named in this suit.**

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

Response: **Defendants are the sole owners and members of Ladles Soups Mount Pleasant. Ladles is an independent LLC owned by the Defendants. Defendants purchased a franchise from co-Defendant Ladles Franchising Inc. which has no control or oversight into Defendants' business. Defendants have not worked on or participated in the issues and facts described in this matter.**

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

Response: **Not applicable.**

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

Response: **Defendants object to this Interrogatory as it seeks information not relevant to the subject matter of this lawsuit or not calculated to lead to admissible evidence.**

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

Response: **Defendants object to this Interrogatory as it seeks information subject to Attorney-Client privilege and calls for legal conclusions. Without waiving these objections, Defendants are unaware of any communications or meetings.**

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

Response: **Defendants had no written or oral contract with the Plaintiff as Plaintiff was never an employee of Defendants.**

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

Response: **Defendants object to the production of this information as it is irrelevant, nor calculated to lead to admissible evidence. Without waiving these objections, www.facebook.com/Ladles-Soups-Mount Pleasant and on Twitter – Follow@Ladles Soups.**

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

Response: **Defendants have attached all documents in their possession at this time. Defendants reserve the right to supplement their answers to Plaintiff's Interrogatories as more information is obtained through the discovery process.**

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

a. How were you named in the lawsuit (e.g. plaintiff, defendant, intervenor, etc.)?

b. What was the nature of each claim and defense?

c. The date, location, and title of the court in which the action was commenced.

d. The names of all the parties other than yourself involved in the action.

Response: **Defendant, LLC has not been a party to a lawsuit.**

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

Response: **None.**

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

Response: **Defendants object on the grounds that this Interrogatory is irrelevant, nor calls for discovery of admissible evidence. Without waiving objections, Defendants have attached all documents in their possession at this time. Defendants reserve the right to supplement their answers to Plaintiff's Interrogatories as more information is obtained**

through the discovery process. Defendants do not regularly produce profit and loss statements, balance sheets and income statements.

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

Response: **Defendants have attached all documents in their possession at this time. Defendants reserve the right to supplement their answers to Plaintiff's Interrogatories as more information is obtained through the discovery process.**

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

a. The name listed in the current articles of organization;

b. All of the names used by the company during the past 10 years and the dates each was used;

c. The name and address of each member;

d. The name and address of each manager;

e. The date and place of formation;

f. The address of the principal place of business; and

g. The states in which it is registered to do business.

Response: **Ladles Soups Mount Pleasant, LLC**
Members - Erik Dyke and Julie Dyke, c/o Shelbourne Law, 131 E. Richardson Ave., Summerville, SC 29483
Incorporated in May 3, 2010 in South Carolina

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

a. all financial accounts, including bank, checking, savings, money market, investment, and/or securities accounts currently held by or for your benefit, and state current balances, location of the accounts, and name on accounts;

b. any and all certificates of deposit, stock certificates in any publicly held or closely held corporation, as well as any bonds owned by each and every

Defendant, membership interest in any and all limited liability companies, partnership interest in any and all partnerships, and any and all interest in any other form of business entity, including joint ventures, whether domestic or offshore, detailing without limitation and with particularity percentages of ownership, amount of revenue generated for each entity, etc.

c. any and all titles to vehicles, mobile homes, or watercraft owned by each and every Defendant, detailing a description of each item including year, model, serial number, vehicle identification number, present value and the amount of any lien thereon;

d. any and all deeds, mortgages, notes, contracts of sale, and settlement or closing statements relating to any real estate transactions involving each and every Defendant;

e. any and all real property, including without limitation (county, state, jurisdiction), whether domestic or offshore for each and every Defendant;

f. any and all life insurance policies owned by each and every Defendant, along with any information pertaining to any loans outstanding on any such policies;

g. any and all items of jewelry or art owned by each and every Defendant, including a description of each item and its most recent appraised valuation;

h. any and all leases of realty or personalty in favor of each and every Defendant;

i. any and all books, records, documents, or writings concerning the financial status of Defendants not herein before specified, including any and all interest in any form of trust; and

j. any and all tax receipts, tax returns or supplemental forms, and any and all other documents, forms or letters filed with United States Internal Revenue Service, and any other state tax authority within the last 5 years.

Response: **Defendants object to this Interrogatory on the grounds that it is compound, unreasonable, overly broad, unduly burdensome and expensive, irrelevant and not reasonably calculated to lead to discoverable evidence.**

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

Response: **Defendants do not know the name and location of every franchise.**

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

Response: **Defendants object to this Interrogatory as it calls for production of irrelevant information or is not conducive to lead to the discovery of admissible evidence.**

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

Response: **Defendants object to this Interrogatory on the grounds that it is irrelevant and unduly burdensome.**

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

Response: **Defendants object to this Interrogatory on the grounds that it seeks information not relevant to the subject matter of this lawsuit nor conducive to lead to admissible evidence. This request is also an invasion of individuals right to privacy as they are not parties to this matter. Plaintiff has not obtained class certification.**

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

Response: **Defendants purchased a franchise and are governed by the Franchise Agreement between the Franchisor and Franchisee.**

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

Response: **Defendants Erik Dyke and Julie Dyke.**

29. Does Respondent have an employee handbook?

Response: **Defendants object to this Interrogatory as it is vague and unduly burdensome as there is no specified time period requested. Without waiving these objections, Defendants have attached all documents in their possession at this time. Defendants reserve the right to supplement their answers to Plaintiff's Interrogatories as more information is obtained through the discovery process.**

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

Response: **Defendants object to this Interrogatory as it is unclear as to what the Plaintiff is seeking.**

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

Response: **Defendants object to this Interrogatory on the grounds that it assumes that Defendants retain credit card tips and does not provide credit card tips to its employees. Without waiving these objections, Defendants do not have a policy of retaining credit card tips from employees.**

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

Response: **This has always been Defendants' policy to give credit card tips to the employees.**

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

Response: **Defendants object to this Interrogatory on the grounds that it assumes that Defendants retain credit card tips and does not provide credit card tips to its employees. Without waiving these objections, Defendants do not have a policy of retaining credit card tips from employees.**

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

Response: **Defendants have not had any meetings.**

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

Response: **Defendants pay cash tips to employees.**

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

Response: **Defendants did not fire Craig Chappell as Craig Chappell was never employed by the Defendants.**

37. Describe Respondent's accounting software.

Response: **Defendants object to this Interrogatory on the grounds that it is overly broad and unduly burdensome and not calculated to lead to the discovery of admissible evidence.**

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

Response: **Defendants Erik Dyke and Julie Dyke handle all of this.**

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

Response: **Defendants object to this Interrogatory on the grounds that it assumes facts not in evidence. Without waiving these objections, Defendants do not have a policy of retaining credit card tips as Defendants does not retain credit card tips from employees.**

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

Response: **No employees have complained.**

RESPECTFULLY SUBMITTED,

By: _____

P. Brandt Shelbourne, Esquire (SCB 15143)
SHELBOURNE LAW FIRM
131 E. Richardson Avenue
Summerville, SC 29483
(843) 871-2210
ATTORNEYS FOR DEFENDANTS LADLES SOUPS OF MOUNT PLEASANT, LLC, ERIK DYKE AND JULIE DYKE

June 24, 2019
Summerville, South Carolina

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Shelbourne Law, do hereby certify that a true and correct copy of Defendants Ladles Soups of Mount Pleasant, LLC, Erik Dyke and Julie Dyke Responses to Plaintiff's First Set of Interrogatories which this certificate is affixed was served upon the following parties via hard copy and/or electronic mail to the following:

Ben LeClercq, Esq. LeClerq Law Firm 708 South Shelmore Blvd., Ste.202 Mount Pleasant, SC, 29406 *Attorney for Plaintiff*	Kerry Koon, Esq. 147 Wappoo Creek Dr. Wappoo Centre, Suite 203 Charleston, SC 29491 kerrykoon@hotmail.com *Attorney for Defendants, Ladles Franchising, Inc.; Ladessoups, LLC, and Tracy Allen*
Paul B. Ferrara, III, Esq. Ferrara Law 8887 Old University Blvd. 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*	

Date: June 25, 2019

Yvonne Franklin, Paralegal at Shelbourne Law

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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

Plaintiff(s),

v.

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

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-10-785

LADLES SOUPS OF MOUNT PLEASANT, LLC, ERIK DYKE AND JULIE DYKE RESPONSES TO PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION

TO: CRAIG CHAPPELL AND HIS ATTORNEY BENJAMIN LE CLERCQ, ESQ.:

Defendants, Ladles Soups Mount Pleasant LLC, Erik Dyke and Julie Dyke, (hereinafter referred to as "Defendants") by and through their undersigned counsel, respond to Plaintiff, Craig Chappell's First Requests for Production as follows:

REQUESTS FOR PRODUCTION

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

Response: Defendants will produce copies of all documents responsive to this request to produce in their possession at this time.

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

Response: Defendants will produce copies of all documents responsive to this request to produce in their possession at this time.

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

Response: Defendants will produce copies of all documents responsive to this request to produce in their possession at this time.

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

Response: None at this time. Furthermore, Defendants have attached all documents in their possession at this time and reserves the right to supplement through the discovery process.

5. Any and all written communications, documents, and things relating to,

supporting, refuting, or involving any of the averments and defenses set forth in any pleading you have submitted in this matter.

Response: Defendants will produce copies of all documents responsive to this request to produce in their possession at this time.

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

Response: None at this time. Defendants reserve the right to supplement through the discovery process.

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

Response: Defendants have not obtained an expert witness at this time. However, Defendants reserve the right to supplement their answer to Plaintiff's Request to Produce as more information is obtained through the discovery process.

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

Response: Defendants do not have any e-mails, faxes, letters, text messages and other written communication with the Plaintiff as Plaintiff was not an employee of the Defendants. Defendants are unaware of specific e-mails, faxes, letters, text messages and other written communication with Defendants, however, Defendants will produce copies of all documents responsive to this request to produce in their possession at this time.

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

Response: Defendants object on the grounds that this calls for production of information protected by the Attorney-Client Privilege and by Attorney Work Product doctrine.

10. Provide for inspection all computers, electronic devices, and telephones containing

relevant production, ESI, or electronic data, including those described in response to Interrogatory number 12.

Response: Objection. This Request for Production is overly broad, unduly burdensome, or not reasonably calculated to lead to discovery of admissible evidence.

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

Response: Objection. Defendants do not owe, nor have paid any other party other than franchise fees which are not relevant or calculated to lead to discovery of admissible evidence.

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

Response: Objection. This Request for Production is overly broad, unduly burdensome. Without waiving these objections, Defendants will produce the federal and state tax returns for the last five years for Ladles Soups of Mount Pleasant, LLC.

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

Response: Objection. This Interrogatory calls for production of irrelevant information and information not calculated to lead to discovery of admissible evidence.

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

Response: None.

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

Response: None.

16. Produce each and every post, note, mention, story, document, or other item made by Respondent during the last seven years, up through and including the date of trial, on any and

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

Response: **None.**

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

Response: **Defendants do not have an organization chart for its business.**

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

Response: **Defendants will produce copies of all documents responsive to this request to produce in their possession at this time, but do not have a handbook.**

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

Response: **Defendants object on the grounds that it is irrelevant nor calculated to lead to admissible evidence.**

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

Response: Defendants object on the grounds that it is irrelevant nor calculated to lead to admissible evidence.

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

Response: In house.

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

Response: Defendants will produce copies of all documents responsive to this request to produce in their possession at this time.

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

Response: Defendants object on the grounds that it is irrelevant nor calculated to lead to admissible evidence.

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

Response: Objection. This Request for Production is an invasion of an employee and/or independent contractor's privacy who are not a party to this action. In addition, this request is unduly burdensome, expensive and not reasonably calculated to lead to discovery of admissible evidence.

25. A copy of each and every piece of written communication, email, text, fax, letter, or otherwise, arising from or relating to Respondent's policy of retaining credit card tips rather than pay them to employees. As described above, every RFP herein shall be deemed a continuing RFP and Respondent must supplement his answers promptly, if and when he obtains relevant

production in addition to, or in any way inconsistent with, his initial production in accordance with the applicable Rules of Civil Procedure.

Response: **Defendants do not have a policy of retaining tips so there are no such documents.**

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

Response: **Defendants object as this request calls for production of irrelevant information or is not calculated to lead to discovery of admissible evidence.**

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

Response: **None.**

RESPECTFULLY SUBMITTED,

By: _____

P. Brandt Shelbourne, Esquire (SCB 15143)
SHELBOURNE LAW FIRM
131 E. Richardson Avenue
Summerville, SC 29483
(843) 871-2210
ATTORNEYS FOR DEFENDANTS LADLES SOUPS OF MOUNT PLEASANT, LLC, ERIK DYKE AND JULIE DYKE

June 25th, 2019
Summerville, South Carolina

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Shelbourne Law, do hereby certify that a true and correct copy of Defendants Ladles Soups of Mount Pleasant, LLC, Erik Dyke and Julie Dyke Responses to Plaintiff's First Requests for Production which this certificate is affixed was served upon the following parties via hard copy and/or electronic mail to the following:

Ben LeClercq, Esq. LeClerq Law Firm 708 South Shelmore Blvd., Ste.202 Mount Pleasant, SC, 29406 *Attorney for Plaintiff*	Kerry Koon, Esq. 147 Wappoo Creek Dr. Wappoo Centre, Suite 203 Charleston, SC 29491 kerrykoon@hotmail.com *Attorney for Defendants, Ladles Franchising, Inc.; Ladessoups, LLC, and Tracy Allen*
Paul B. Ferrara, III, Esq. Ferrara Law 8887 Old University Blvd. 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*	

Date: June 25, 2019

Yvonne Franklin, Paralegal at Shelbourne Law

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-10-785

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

Plaintiff(s),

v.

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

Defendants.

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

FILED
2019 AUG 22 PM 4:46
JULIE J. ARMSTRONG
CLERK OF COURT

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

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

Respectfully Submitted,

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

August 22, 2019
Mt. Pleasant, South Carolina

CERTIFICATE OF SERVICE

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

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

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

P. Brandt Shelbourne – brandt@shelbournelaw.com
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131 E. Richardson Avenue
Summerville, SC 29483

Debbie Mathews

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-10-785
CRAIG CHAPPELL, on behalf of himself and others similarly situated, Plaintiff(s), v. Ladles Soups – James Island LLC; Ladlessoups, LLC; Ladles Soups At Cane Bay LLC; Ladles Soups At Citadel Mall LLP; Ladles Soups Calhoun LLC; Ladles Soups Cane Bay LLC; Ladles Soups Coosaw LLC; Ladles Soups Downtown Charleston, LLC; Ladlessoups Fresh Fields, LLC; Ladles Soups @ Freshfields Village, LLC; Ladlessoups Mainstreet, LLC; Ladles Soups Moncks Corner LLC; Ladlessoups Mount Pleasant, LLC; Ladles Franchise Development, LLC; Ladles Franchising Inc.; Ladles Fort Mill, LLC; Ladles Knightsville LLC; Ladles West Ashley; Teri Owens; Sue Allen, Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke, Stan Sutton, Carol Sutton, Jason Dalter, Kellie Henderson; Jane Doe 1-25 (Unknown Operating Company and Management Company Owners); John Doe 25-40 (Management Personnel) Defendants.	

AFFIDAVIT

I, Lani Charpia, having been duly sworn, declare under penalty of perjury the following:

1. I have been employed as a server at Ladles West Ashley since approximately February, 2018, located at 3125 Bees Ferry Rd, Charleston, SC 29414.

2. I was hired “on the spot” when I walked in the location at that time, and this has been my first job.

3. I started working for probably 15 hours a week, and have worked as much as 30 hours a week since I started.

4. Normally all of the employees do everything – – everybody pitches in a little bit. Specifically, employees work in the kitchen, help out with serving, and also handle the register. I believe this is a common practice for all Ladles locations.

5. One night, approximately 6 or 7 months ago (after the filing of this action) I was working at the register, and a female customer asked me words to the effect of “who gets the tip if I leave it on a credit card?” I responded “I don’t know – – all I know is that all I get are the cash tips.” The customer appeared to me to be upset, saying words the fact that she thought that was misleading. She said that she wanted to speak to the manager. I did not hear the conversation between the customer and the manager, as I was in a back room talking with one of the other managers.

6. The other manager told me “don’t ever tell a customer that the servers don’t get the tips.

7. It must’ve been a heated conversation between the customer and the manager, Taylor, because Taylor was crying when she came back into the back.

8. I have had other customers ask me words to the effect of “who gets the credit card tips.” That of course makes me feel very uncomfortable, and I usually will say words to the effect of “I’m not allowed to say.”

FURTHER AFFIANT SAYETH NAUGHT.

August 22, 2019

Lani Charpia

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON CRAIG CHAPPELL Plaintiff, vs. LADLES SOUPS JAMES ISLAND LLC, ET AL. Defendant.	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-10-785 **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**

Plaintiff's Attorney:	Defendant's Attorney:
David D. Ashley, Bar No. 76206 Address: 708 S. Shelmore Blvd, Suite 202 Mount Pleasant, SC 29464 Phone: 843-722-3523Fax 843-352-2977 E-mail: david@leclercqlaw.comOther: debbie@leclercqlaw.com	Paul B. Ferrara, Bar No. 70511 Address: 8887 Old University Blvd, Suite 200, North Charleston, SC 29406 Phone: 843-569-5111 Fax843-569-5411 E-mail: paul@ferraralawfirm.netOther: _____

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

SECTION I: Hearing Information

Nature of Motion: Motion for Class Certification
Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ **YES**/☐ **NO**

SECTION II: Motion/Order Type

☐ Written motion attached
☐ Form Motion/Order

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

_____ _____
Signature of Attorney for ☐ Plaintiff /☐ Defendant Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25.00
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-10-785
CRAIG CHAPPELL, on behalf of himself and others similarly situated, Plaintiff(s), v. Ladles Soups – James Island LLC; Ladlessoups, LLC; Ladles Soups At Cane Bay LLC; Ladles Soups At Citadel Mall LLP; Ladles Soups Calhoun LLC; Ladles Soups Cane Bay LLC; Ladles Soups Coosaw LLC; Ladles Soups Downtown Charleston, LLC; Ladlessoups Fresh Fields, LLC; Ladles Soups @ Freshfields Village, LLC; Ladlessoups Mainstreet, LLC; Ladles Soups Moncks Corner LLC; Ladlessoups Mount Pleasant, LLC; Ladles Franchise Development, LLC; Ladles Franchising Inc.; Ladles Fort Mill, LLC; Ladles Knightsville LLC; Ladles West Ashley; Teri Owens; Sue Allen, Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke, Stan Sutton, Carol Sutton, Jason Dalter, Kellie Henderson; Jane Doe 1-25 (Unknown Operating Company and Management Company Owners); John Doe 25-40 (Management Personnel) Defendants.	**NOTICE OF MOTION, MOTION FOR CLASS CERTIFICATION, AND MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR CLASS CERTIFICATION**

FILED
2019 SEP 11 PM 3:58
CHARLESTON COUNTY, SC

TO: PAUL B. FERRARA, III, ESQ., P. BRANDT SHELBOURNE, ESQ., KERRY KOON, ESQ., AND M. EVAN LACKE, ESQ., ATTORNEYS FOR THE DEFENDANTS:

The Plaintiffs, by and through their undersigned counsel, within ten (10) days or hence sooner if the Court so allows hereby request the Court for an order certifying a class action pursuant to Rule 23, South Carolina Rules of Civil Procedure (SCRCP), South Carolina case law, persuasive

federal precedent, and the memorandum of law incorporated below as well as allegations contained within the Complaint. As demonstrated herein, the proposed class meets all the requirements for class certification under Rule 23, SCRCP, and thus, class treatment is appropriate in this case. Plaintiffs reserve the right to submit a supplemental Memorandum and affidavits in support of its motion prior to the hearing.

INTRODUCTION

This is an action for relief under the South Carolina Payments of Wages Act, S.C. Code § 41-10-10 et seq. ("Wages Act"). Plaintiff also alleges breach of contract and conversion, and is requesting leave to amend to add additional claims and description of fraudulent behavior by Defendants discovered not through good faith participation in discovery by Defendants, as required under the South Carolina Rules of Civil Procedure, but during the course of counsel's investigation. Plaintiff alleges that Defendants wrongfully and intentionally withheld credit card tips that were rightly intended for Plaintiff. Defendants allege to be separate franchise operations under license from a common franchisor, and Plaintiff class alleges that the illegal conversion by Defendants of credit card tips wrongfully withheld from Plaintiff class is a common scheme or policy of Defendants, that Defendants knowingly permitted or actively participated in this deceptive scheme, had the actual power to prevent the unlawful action, and/or are otherwise liable employers under the Wages Act.

To date, a substantial number of Defendants have failed to make any attempt whatsoever to respond to Plaintiffs' First Interrogatories and First Requests for Production. Despite these Defendants' abject failure to comply with discovery rules, counsel through its own investigation has determined the existence of additional class member Plaintiffs, and files herewith a motion to amend to, *inter alia*, add additional Plaintiff Lani Charpia. Plaintiff respectfully submits that when

all Defendants actually comply fully with their discovery obligations under the South Carolina rules, additional class members from additional locations will be revealed, and possibly additional claims as well. A motion to compel those responses is currently pending with this Court. ***See,* Plaintiffs' Motion to Compel, attached to Motion as Exhibit A.** As for the Defendants who have made at least some attempt at responding to Plaintiffs' discovery requests, they have failed to respond to certain interrogatories and requests for production with the bare minimum information to identify former and present employees which may be similarly situated as the named Plaintiff.

SUMMARY OF ARGUMENT

This action should be certified as a class action because all requirements of Rule 23(a) (numerosity, commonality, typicality, adequacy, and $100 threshold) have been met. Additionally, although not required under Rule 23(a), SCRCP, questions of fact and law common to the class predominate over any individualized questions. The class members' claims are virtually identical: each Plaintiff claims simply that Defendants have wrongfully converted and withheld credit card tips which rightly belong to the Plaintiffs. Further, a class action is the superior method for the fair and efficient adjudication of this controversy. This Court does not need to have one hundred or more identical trials when management of this class claim is unlikely to present difficulties. Food and beverage industry workers are well known for moving frequently, and therefore identifying all plaintiffs poses challenges, further buttressing the need for a class action.

STATEMENT OF FACTS AND PROCEDURAL BACKGROUND

A.) Statement of Facts

This is a lawsuit brought by a former employee of Ladles Soups – James Island, LLC, Craig Chappell, as well as putative additional Plaintiff Lani Charpia, on behalf of themselves and others similarly situated, alleging causes of action for failure to pay wages under the South Carolina Payment of Wages Act, breach of contract, conversion, and quantum meruit. Plaintiff alleges that Defendants wrongfully and intentionally withheld credit card tips that were rightly intended for Plaintiff and that the illegal conversion by Defendants of credit card tips is a common scheme or policy of Defendants. The existence of the policy not to pay employees credit card tips came to light when on May 6, 2016, Plaintiff Chappell discovered a handwritten ledger kept at the James Island restaurant and subsequently learned that such policy is a Ladles "group-wide" policy. The very next day Plaintiff Chappell confronted his manager, Teri Owens who is also an owner, telling her he thought it was wrong for an employer to retain credit card tips. Plaintiff Chappell was immediately terminated when he complained about the Defendants' retention of employee tips.

B.) Procedural Background

On February 14, 2018, Plaintiff commenced this action by Summons and Complaint which asserted a number of claims against the Ladles Defendants including failure to pay wages under the South Carolina Payment of Wages Act, breach of contract, and conversion. Plaintiffs encountered substantial challenges getting all the defendants served. For example, on May 31, 2018, Mr. Ferrara refused to accept service on multiple Defendants he is currently representing. After Plaintiffs were unable to effect service on all parties, on June 13, 2018 Plaintiff filed a Motion for Extension of Time to Serve Summons and Complaint and Petition for Order of

Publication which was granted by this Court on July 20, 2018. On or about June 20, 2018, three Defendants filed Answers to the Complaint. Next, an additional sixteen Defendants filed Answers on or about July 18, 2018. Finally, four additional Defendants filed Answers on or about August 1, 2018.

Subsequent to Answers being filed by Defendants, a number of motions were filed. On July 24 and 28, 2018, sixteen Defendants' Motion to Disallow Class Certification, Motion to Dismiss Improper Parties, and Motion to Dismiss based on Rule 12(b)(6) were filed. In the interim, a Consent Order exempting this matter from ADR under SCADR Rule 5(e) due to scheduling issues of all counsel was filed on December 18, 2018. Next, a hearing on Defendants' motions was held and all three motions were denied by Orders of this Court dated January 29, 2019. On February 14, 2019, a Motion to Reconsider the January 29, 2019 Order denying Defendants' Motion to Dismiss was filed on behalf of sixteen Defendants and denied by an Order of this Court dated March 6, 2019. Undersigned counsel thought it prudent, as in federal court, to await the determination of these motions before beginning discovery, and did not, for example, want to involve the court in discovery disputes for parties that might ultimately have been dismissed. Currently, Defendants' Motions for Summary Judgment and Plaintiffs' Motion to Compel, Motion for Continuance, and Motion to Intervene are pending with this Court.

PROPOSED CLASS

The class Plaintiffs request this Court to certify is defined as follows:

> All employees who worked for Defendants in Ladles restaurant locations, and were paid an hourly wage plus tips, during the three (3) years prior to the filing of this lawsuit.
>
> Excluded from the Class are all persons who properly execute and file a timely request for exclusion from the Class.

Plaintiffs propose an opt-out class be certified. *See Salmonsen v. CGD, Inc.*, 377 S.C. 442, 459-60, 661 S.E. 2d 81, 91 (2008) (concluding the adoption of opt-out class action and notification is the exclusive method of class action litigation in this state.

CLASS ACTION PRINCIPLES

In the interest of judicial economy, South Carolina courts give Rule 23 an expansive, rather than a restrictive construction, adopting a standard of flexibility in application which best serves the affected parties and promotes efficiency in a particular case. *Littlefield v. S.C. Forestry Comm'n*, 337 S.C. 348, 354-55, 523 S.E.2d 781, 784 (1999) (recognizing Rule 23, SCRCP, "endorses a more expansive view of class action availability"). In fact, the South Carolina Supreme Court recently touted Rule 23's expansive nature and the benefits in liberally applying Rule 23 so as to grant class certification where a court finds all of Rule 23(a)'s prerequisites are satisfied. *Grazia v. S.C.* State Plastering, LLC, 390 S.C. 562, 576, 703 S.E.2d 197, 204 (2010) ("this Court has expressed the viewpoint that class actions are favored in this state . . . ").

A.) While Required to Employ a Rigorous Analysis, this Court Retains Significant Discretion in Granting Class Certification

South Carolina courts enjoy significant discretion in reviewing a motion for class certification, and a court may certify a class if, following a "rigorous analysis," the court finds the Rule 23(a) requirements have been met. *Waller v. Seabrook Island Prop. Owners Assoc.*, 300 S.C. 465, 467, 388 S.E.2d 799, 801 (1990) ("[A] trial judge's ruling on whether an action is properly maintainable as a class action is within his discretion . . . It is imperative the court apply a rigorous analysis to assure the prerequisites of Rule 23(a) have been satisfied . . ."); *see also In re Whirlpool Corp. Front-Loading Washer Products Liability Litigation ("Whirlpool II"), F.3d 838, 851 (6th Cir. 2013) cert denied, Whirlpool Corp. v. Glazer, __ S. Ct. __, 2014 WL 684065, at *1 (Feb. 24, 2014); Comcast Corp. v. Behrend*, __U.S. __, 133 S. Ct. 1426, 1432 (2013) (noting same).

Although the term "rigorous analysis" is not specifically defined by our courts, the Supreme Court's formulation in *Falcon* (repeated in *Dukes*) requires the court to find: (1) the satisfaction of Rule 23 prerequisites; and (2) this satisfaction of Rule 23 prerequisites is *actual* as opposed to *presumed*. *Falcon*, 457 U.S. at 157-58; *Wal-Mart Stores, Inc. Dukes*, __ U.S. __, 131 S. Ct. 2541, 2552-53 (2011). Depending upon the case, the determination of whether Rule 23 prerequisites are "actually" satisfied *may* "entail *some* overlap with the merits of the plaintiff's underlying claim." *Id.* However, in instances where the court deems it necessary to probe behind pleadings, the court's permissible inquiry into the merits of the plaintiffs' claims at the class certification stage is specifically restricted:

> Rule 23 grants no license to engage in free-ranging merits inquires at the certification stage. Merits questions may be considered to the extent - but only to the extent - that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied.

Amgen Inc. v. Connecticut Retirement Plans & Trust Funds, __ U.S. __, 133 S.Ct. 1184, 1194-95 (2013) (citations omitted).

Thus, it is fair to conclude a court performs a "rigorous analysis" by working through each of the five Rule 23(a) requirements for class certification. If Plaintiffs' evidentiary proof of a Rule 23 requirement overlaps with a merits contention, the court may, at its discretion, touch upon the merits, but only to the extent necessary. Conversely, if Plaintiffs' evidentiary proof of a Rule 23 requirement does not overlap with a merits contention, the court may, at its discretion, not touch upon the merits at all. *See, e.g., Whirlpool II*, 722 F.3d at 851-52 (" ... courts may not tum the class certification proceedings into a dress rehearsal for the trial on the merits.") (internal citations omitted); Amgen,_ U.S. _, 13 3 S.Ct. at 1194-9 5 (limiting inquiry into a case's merits where the class certification inquiry touches upon an indispensable element of the claim and on which a failure of proof would end the case).

B.) The Burden is on the Plaintiff to Prove Satisfaction of Rule 23 's Requirements

Under our jurisprudence, Plaintiffs bear the burden of proving the five Rule 23(a) prerequisites necessary for maintaining a class action. *Waller*, 300 S.C. at 467, 388 S.E.2d at 801 (noting the "proponent of class certification bears the burden of proving five prerequisites under South Carolina law "); see also *Dukes*,_ U.S. __ , 131 S. Ct. at 2551 (noting the plaintiff must "affirmatively demonstrate his compliance with the Rule - that is, he must be prepared to prove [that], in fact, [the requirements of Rule 23 are satisfied.]"

Specifically, under South Carolina's Rule 23(a), the Plaintiffs must demonstrate:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the class representatives are typical of the claims or defenses of the class;

(4) the class representatives will fairly and adequately protect the interests of the class; and

(5) the amount in controversy exceeds one hundred dollars per class member.

South Carolina's Rule 23(a) is nearly identical to its federal counterpart, and accordingly, South Carolina looks favorably on federal precedent interpreting this language. *Waller,* 300 S.C. at 467, 388 S.E.2d at 801 (noting Rule 23(a), SCRCP, is principally drawn from Rule 23(a), FRCP). South Carolina's Rule 23 is materially different from the Federal Rule, however, in that it does not require Plaintiffs satisfy any predominance, superiority or ascertainability requirement in order to achieve class certification - class certification, under South Carolina law, only requires Plaintiffs satisfy the five, above-listed prerequisites. *Littlefield*, 337 S.C. at 355, 523 S.E.2d at 784 ("Our state class action rule differs significantly from its federal counterpart. The drafters of Rule

23, [SCRCP] intentionally omitted from our state rule the additional requirements found in [Rule 23(b), FRCP].").

DISCUSSION

This Court should grant Plaintiffs' Motion for Class Certification because Plaintiffs satisfy each of the five prerequisites necessary to maintain this class action, even under a rigorous analysis of the same, and therefore, class certification is appropriate under Rule 23(a), SCRCP.

1.) Numerosity

To satisfy Rule 23(a)'s numerosity requirement, Plaintiffs must demonstrate "the class is so numerous that joinder of all members is impracticable." Rule 23(a)(l), SCRCP. Numerosity is "not dependent on a specific number of class members," and "[t]here is no mechanical test for determining whether in a particular case the requirement of numerosity has been satisfied." *Brady v. Thurston Motor Lines*, 726 F.2d 136, 145 (4th Cir. 1984) quoting *Cypress* v. *Newport News Gen. & Nonsectarian Hosp. Ass'n*, 375 F.2d 648,653 (4th Cir. 1967); *Kelley v. Norfolk & W Ry. Co.*, 584 F.2d 34, 35 (4th Cir. 1978) ("The issue [of numerosity] is one primarily for the [c]ourt, to be resolved in light of the facts and circumstances of the particular case."). Indeed, "numerosity" is really a question of "impracticable joinder" which "depends on many factors, including, for example, the size of the class, ease of identifying its numbers and determining their addresses, facility of making service on them if joined and their geographic dispersion." *George v. Duke Energy Ret. Cash Balance Plan*, 259 F.R.D. 225, 231 (D.S.C. 2009) (citations omitted).

Here, the record contains sufficient documentation evidencing the size of the proposed class is potentially so numerous that joinder is impractical. Simply stated, there are at least seventy-five current and former food service employees of the Defendants, all of whom qualify as potential class members because the named Plaintiff alleges there was a policy in place at most or

all of the Defendant franchises allowing the management at the different restaurants to keep the credit card tips the hourly food service employees were entitled to in violation of the South Carolina Wage Payment Act. In his affidavit, Mr. Chappell attests that "[w]hile I was employed at Ladles James Island, there were approximately seven hourly food service employees." Additionally, in her affidavit, Ms. Charpia attests that "In the year and a half that I have worked at Ladles West Ashley, I have seen approximately more than ten hourly paid food service employees come and go." ***See,* Complaint and Affidavits of Craig Chappell and Lani Charpia, attached to Motion as Exhibits B, C, and D.** This policy has not only affected past and present employees but will certainly affect future employees as well. *See, e.g., Cypress*, 375 F.2d at 652-54 (Fourth Circuit approving certification of class containing 18 potential members). Given that there are over seventy-five hourly food service employees who did not receive their credit card tips due to the policy in place at the Defendant franchises, there are clearly enough plaintiffs to satisfy any "numerosity" requirement for class certification.

An example of another hourly food service employee is Lani Charpia whose motion to intervene is currently pending in this Court. ***See,* Lani Charpia's Motion to Intervene, attached to Motion as Exhibit E**. Ms. Charpia has been employed as a server at Ladles West Ashley since approximately February, 2018, and has attested to the same allegations made by the named Plaintiff in the Complaint. Specifically, Ms. Charpia attests that her Defendant employer withholds her credit card tips and the credit card tips of all hourly food service employees – "I am an hourly paid food service employee at Ladles West Ashley and all of my credit card tips are whithheld," "Ladles West Ashley has a policy of withholding all credit card tips from all hourly paid food service employees." ***See,* Affidavit of Lani Charpia.**

Furthermore, Plaintiff also satisfies the impractical joinder analysis given that the joinder of seventy-five hourly food service employees, some dispersed throughout a sizable geographic area, is difficult and impractical to achieve, and difficult to manage if achieved. *See*, e.g., *City of Ann Arbor Employees' Retirement Sys. v. Sonoco Prods. Co.*, 270 F.R.D. 247, 251 (D.S.C. 2010) (granting plaintiff's class certification motion, in part, on the basis that "[g]iven the number and likely geographical dispersion of potential class members, joinder would be impracticable). The class is composed of every tipped employee that worked at Defendants' locations in the three years prior to the filing of this lawsuit. This class likely consists of over seventy-five persons geographically dispersed throughout the state of South Carolina and in other states, the joinder of whom in one action is impractical. This is particularly the case here and is evidenced by the fact that the Ladles Defendants have locations all throughout the state of South Carolina and because service in the food and beverage industry is transient by nature, restaurants require numerous employees, and Defendants are likely the sole source of contact information for members of the Plaintiff class.

Moreover, the refusal by the majority of Defendants to respond at all to Plaintiffs' discovery requests and the refusal of the other Defendants to respond to Plaintiffs' requests for basic information to identify their employees has substantially impeded Plaintiffs' attempts to further develop the class members. This information would further show that such a class would likely be composed of a substantial number of people further fulfilling the numerosity requirement.

2.) Commonality

South Carolina's Rule 23 commonality requirement is satisfied if at least one common legal or factual question exists among Class members. *McGann v. Mungo*, 287 S.C. 561, 568, 340 S.E.2d 154, 157 (Ct. App. 1986) (noting "a single, common question" can fulfill the Rule 23(a)(2),

SCRCP, commonality requirement) (citations omitted); *see also Dukes*,_ U.S._, 131 S. Ct. at 2556 (noting Rule 23(a) does not require that all questions of law or fact raised in the litigation be common; indeed, even a single question of law or fact common to the members of the class will satisfy the commonality requirement.); *Nagareda*, The Preexistence Principle and the Structure of the Class Action, 103 Colum. L. Rev. 149, 176, n. 110 (2003) (For purposes of Rule 23(a)(2), "even a single common question will do."). "A question is ordinarily understood to be a subject or point open to controversy ... [t]hus, a question common to the class must be a dispute, either of fact or of law, the resolution of which will advance the determination of the class members' claims." *Dukes*, _U.S._, 131 S. Ct. at 2562. (dissent). Similarly stated, what is necessary for certification are common issues, the resolution of which will advance the litigation. *McGann*, 287 S.C. at 568, 340 S.E.2d at 157 ("Ultimately, commonality is a judgment that the issues are sufficiently similar so that the class action will be a more efficient means of resolving the problem ... ") (citations omitted); *Dukes*,_ U. S._, 131 S. Ct. at 2551 (noting commonality requires "a common contention of such a nature that it is capable of class-wide resolution -- which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke."); *Nagareda*, Class Certification in the Age of Aggregate Proof, 84 N.Y.U.L. Rev. 97, 132 (2009) ("What matters to class certification .. .is not the raising of common questions ... but, rather the capacity of a class wide proceeding to generate common answers apt to drive the resolution of the litigation.")

Here, Plaintiffs demonstrate as least five primary questions, all of which will produce answers central to the validity of Plaintiffs' claims:

(1) Whether class members worked as service employees in Ladles restaurants;

(2) Whether class members were paid on an hourly basis plus tips;

(3) Whether Defendants illegally refused to pay Plaintiff and class members credit card tips they earned, instead unlawfully retaining and converting the same;

(4) Whether Defendants have acted or refuse to act on grounds generally applicable to the class; and

(5) Whether Plaintiffs and the class members are entitled to damages from the Defendants.

In addition to raising common questions, Plaintiffs' claims also arise from a common nucleus of facts given there was a policy in place in the Defendant franchises allowing the management at the different restaurants to keep the credit card tips the service employees were entitled to. These common facts affirmatively establish both (a) the Plaintiffs' common injury – they all were subject to the Defendants' policy which is in violation of the South Carolina Wages Act; and (b) the Plaintiffs' common damages – the loss of income from credit card tips. ***See,*** **Complaint and Affidavits of Craig Chappell and Lani Charpia.**

Because Plaintiffs' claims are essentially based upon the same contentions (i.e., violation of the South Carolina Wages Act), and the evidence confirms these contentions are common among Plaintiffs, it follows said contentions are "of such nature that [they] are capable of class-wide resolution." Dukes, _ U.S. _, 131 S. Ct. at 2551. In other words, proof of loss of credit card tips due to the Defendants withholding of credit card tips exist as to the named Plaintiff, and therefore, class certification is appropriate because the class action vehicle best serves to resolve such "common" issues "in one stroke" for all members of the class. *Jd.*

3.) Typicality

In addition to satisfying Rule 23(a)'s commonality requirement, Plaintiffs also sufficiently satisfy Rule 23(a)' s typicality requirement. Typicality is satisfied if "the claims or defenses of the [class representative] are typical of the claims or defenses of the class." Rule 23(a)(3), SCRCP. Typical does not mean identical, and Rule 23(a)'s typicality requirement is satisfied if the class

members' claims are "fairly encompassed by the named plaintiffs' claims." *Whirlpool II*, 722 F.3d at 852. In other words, the principal "typicality" inquiry is whether the class representative's claims have the same essential characteristics as the claims of the other members of the class. As the Supreme Court observed in *Dukes*, the typicality analysis aids courts in "determining whether under the particular circumstances maintenance of a class action is economical and whether the named Plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence." *Dukes*,_ U.S. __ , 13 1 S.Ct. at 2551, n.5 quoting *Falcon*, 457 U.S. at 157-158, n.13.

The practice of withholding the employees' credit card tips was not just limited to one employee. It was a widespread policy applied across the board and that has affected and continues to affect several past and present employees. Mr. Chappell attests that "[w]hile I was employed at Ladles James Island, it had a policy of withholding all credit card tips from all hourly paid food service employees." Additionally, Ms. Charpia attests that "Ladles West Ashley has a policy of withholding all credit card tips from all hourly paid food service employees." ***See,* Affidavits of Craig Chappell and Lani Charpia.** And because it was a common practice that affected a substantial number of employees, the named Plaintiff was not the only one affected and his claims are representative of the claims of the entire class.

In light of the foregoing, Plaintiffs clearly satisfy Rule 23(a)'s typicality requirement because the claims asserted by the named Plaintiff are typical of the claims of the class. Specifically, the named Plaintiff shares attributes typical of each proposed class member. Indeed, the named Plaintiff's claims are based upon a common nucleus of operative facts arising out of Defendants' common course of conduct which directly involved the employment of the class members and the improper withholding of charged tips from them. Accordingly, the named

Plaintiff's claims arise from the same practice giving rise to the claims of the Class - Defendants' policy of improperly withholding charged tips. Accordingly, the named Plaintiff and the proposed class necessarily pursue the same legal theories: the named Plaintiff was employed by the Defendants and the Defendants improperly withheld his credit card tips. Exactly like the named Plaintiff, the proposed class are or have been employed by the Defendants and the Defendants have or currently are improperly withholding their charged tips. Where, as here, the named Plaintiff and all class members have had their credit card tips improperly withheld and they advance the same legal theories regarding that practice, the typicality requirement is satisfied.

In sum, Plaintiffs' claims are legally and factually consistent with those sought on behalf of the proposed class, and thus, the named Plaintiff's claims are typical of the class members' claims under Rule 23(a). *See In Re: Cox Enterprises, Inc. Set-Top Cable Television Box Antitrust Litigation*, 2014 WL 104964 at *4 (W.D. Ok. 2014) ("Differing fact situations of class members do not defeat typicality under Rule 23(a)(3) so long as the claims of the class representative and class members are based on the same legal or remedial theory.") (citations omitted).

4.) Adequacy

The principal factor in determining the adequacy of a class representative is whether the named Plaintiff has the ability and commitment to prosecute the action vigorously. *South Carolina Nat'l Bank v. Stone*, 139 F.R.D. 325, 329-30 (D.S.C. 1991). There are two criteria to which courts look in determining whether the class representative adequately protects the interests of the class: (1) The class representatives should not have any significant antagonistic or conflicting interests to the unnamed class members; and (2) it must appear the class representatives will vigorously prosecute the interests of the class through qualified counsel. *Runion v. US Shelter*, 98 F.R.D. 3_13, 316 (D.S.C. 1983); *Nat 'l Ass 'n of Regional Med. Programs, Inc. v. Matthews*, 551 F.2d

340, 345 (D.C. Cir. 1976), cert. denied, 431 U.S. 954 (1977). In addition, it must appear the class representatives voluntarily accept the fiduciary relationship towards all the members of the putative class. *Id.*

As a former employee of a Ladles Defendant that had a policy of withholding credit card tips, the named Plaintiff "possess the same interest and suffers the same injury as the class members." *Gunnells v. Healthcare Services, Inc.*, 348 F.3d 417, 425 (4th Cir. 2003). Indeed, no material conflict exists between the named Plaintiff (former employee of Defendants) and the class members he seeks to represent (also former and current employees of Defendants). Moreover, the named Plaintiff and his counsel are committed to aggressively pursuing this litigation on behalf of the other class members who had credit card tips improperly withheld from them. ***See,* Affidavit of Craig Chappell.** Notably, Plaintiff's counsel has practiced before this Court, as well as federal court, in a number of complex commercial commercial, employment, FLSA and consumer actions, and thus, the Court is aware of counsel's competency in litigating complex actions.

5.) Amount in Controversy

The final Rule 23(a) prerequisite requires the "amount in controversy" to exceed one hundred dollars for each member of the proposed class. This amount is based on the amount claimed by the Plaintiffs, and where Plaintiffs claim damages greater than one hundred dollars per class member, the "amount in controversy" requirement is satisfied. *Gardner v. Newsome Chevrolet-Buick*, 404 S.E.2d 200,201 (S.C. 1991). In this case it will be the total amount of the credit card tips Defendants withheld from each employee combined with the damages each employee is entitled to under the law, which, under the South Carolina Payment of Wages Act, is three times the amount of the credit card tip each employee did not receive. In his affidavit, Mr. Chappell attests that "[b]ased on my knowledge and experience working at Ladles James Island, I

believe that well over $100.00 in charged credit card tips were withheld from each hourly food service employee." Additionally, in her affidavit, Ms. Charpia attests that "I have worked at Ladles West Ashley for approximately a year and half. I regularly see the end of day credit card reports and they show the amount of charged tips for the entire day. On a typical day, the amount of charged tips for the day is at least $100." ***See*, Affidavits of Craig Chappell and Lani Charpia.** Thus, based upon those rules, meeting the jurisdictional hundred dollars threshold is feasible for each Plaintiff in the case.

CONCLUSION

Based upon the foregoing, Plaintiffs affirmatively satisfies the requirements of Rule 23(a), SCRCP, and therefore, class certification is appropriate. Class certification streamlines the adjudication of a large unknown and to date unknowable number of claims concerning Defendants' illicit conversion of wages and credit card tips intended for Plaintiffs, and provides a superior avenue for much needed relief to all similarly situated class members. Accordingly, Plaintiffs respectfully request the Court issue an Order:

(1) Certifying this action as a class action;

(2) Appointing Plaintiffs, Craig Chappell and Lani Charpia, as class representatives;

(3) Appointing Ben Le Clercq as class counsel; and

(4) Authorizing class counsel to provide opt-out notice to the class.

WHEREFORE, Plaintiffs respectfully request that this Court grant this Motion for Class Certification.

Respectfully submitted,

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Phone (843) 722-3523
Counsel for Plaintiffs

September 11, 2019
Mt. Pleasant, South Carolina

CERTIFICATE OF SERVICE

I, Debbie Mathews, certify that on September 11, 2019, a true and correct copy of the foregoing **NOTICE OF MOTION, MOTION FOR CLASS CERTIFICATION, AND MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR CLASS CERTIFICATION** was served upon counsel for Defendants, via electronic mail as follows:

Kerry Koon - kerrykoon@hotmail.com
M. Evan Lacke - elacke@lackelawfirm.com
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Paul B. Ferrera, III - paul@ferraralawfirm.net
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131 E. Richardson Avenue
Summerville, SC 29483

Debbie Mathews
Debbie Mathews

A

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-10-785
CRAIG CHAPPELL, on behalf of himself and others similarly situated, Plaintiff(s), v. Ladles Soups – James Island LLC; Ladlessoups, LLC; Ladles Soups At Cane Bay LLC; Ladles Soups At Citadel Mall LLP; Ladles Soups Calhoun LLC; Ladles Soups Cane Bay LLC; Ladles Soups Coosaw LLC; Ladles Soups Downtown Charleston, LLC; Ladlessoups Fresh Fields, LLC; Ladles Soups @ Freshfields Village, LLC; Ladlessoups Mainstreet, LLC; Ladles Soups Moncks Corner LLC; Ladlessoups Mount Pleasant, LLC; Ladles Franchise Development, LLC; Ladles Franchising Inc.; Ladles Fort Mill, LLC; Ladles Knightsville LLC; Ladles West Ashley; Teri Owens; Sue Allen, Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke, Stan Sutton, Carol Sutton, Jason Dalter, Kellie Henderson; Jane Doe 1-25 (Unknown Operating Company and Management Company Owners); John Doe 25-40 (Management Personnel) Defendants.	**PLAINTIFFS' MOTION TO COMPEL DISCOVERY RESPONSES TO PLAINTIFS' FIRST INTERROGATORES AND FIRST REQUESTS FOR PRODUCTION FROM DEFENDANTS LADLES SOUPS – JAMES ISLAND, LLC; LADELES SOUPS FRESH FIELDS, LLC; LADLES SOUPS @ FRESHFIELDS VILLAGE, LLC; LADLES FRANCHISE DEVELOPMENT, LLC; LADLES SOUP DOWNTOWN CHARLESTON, LLC; LADLES FORT MILL,LLC; LADLES SOUPS MONCKS CORNER, LLC; LADLES KNIGHTSVILLE, LLC; LADLES WEST ASHLEY; LADLES SOUPS COOSAW, LLC; DAN SUTTON; CAROL SUTTON; STEVEN TRAEGER; AND KELLI HENDERSON**

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

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

Respectfully Submitted,

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Phone (843) 722-3523
Counsel for Plaintiff

August 22, 2019
Mt. Pleasant, South Carolina

CERTIFICATE OF SERVICE

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

Kerry Koon - kerrykoon@hotmail.com
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Debbie Mathews

Debbie Mathews

B

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	CASE NO.:
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.	VERIFIED COMPLAINT TO RECOVER MISAPPROPRIATED TIPS (Class Action) (Jury Trial Demanded)

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

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

PARTIES, JURISDICTION & VENUE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NATURE OF CASE

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

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

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

GENERAL FACTUAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CLASS ACTION ALLEGATIONS

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

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

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

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

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

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

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

a. Whether Class Members worked as service employees in Ladles restaurants;

b. Whether Class Members were paid on an hourly basis plus tips;

c. Whether Defendants illegally refused to pay Plaintiff and Class Members credit card tips they earned, instead unlawfully retaining and converting the same;

d. Whether Defendants have acted or refuse to act on grounds generally applicable to the class;

e. Whether Plaintiffs and the Class Members are entitled to damages, prejudgment interest, attorney's fees and costs from Defendants.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COUNT II
(Class Action -- Breach of Contract)

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

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

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

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

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

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

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

COUNT III
(Class Action -- Conversion)

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

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

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

67. Defendants did so without Plaintiffs' permission.

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

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

DEMAND FOR JURY TRIAL

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

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

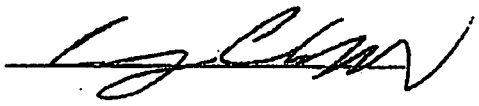
Le Clercq Law Firm, P.C.

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

VERIFICATION

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

Date: February 2, 2018



C

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-10-785
CRAIG CHAPPELL, on behalf of himself and others similarly situated, 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. Craig Chappell, declare under penalty of perjury the following:

1. I was an hourly paid employee at Ladles Soups – James Island, LLC, ("Ladles James Island") located at 1175A Folly Road Charleston, SC 29412 from approximately February, 2015 to April 2015, and then from approximately August, 2015 to May, 2016.

2. While I was employed at Ladles James Island, there were approximately seven hourly food service employees.

3. While I was employed at Ladles James Island, it had a policy of withholding all credit card tips from all hourly paid food service employees.

4. I was an hourly paid food service employee at Ladles James Island and all of my credit card tips were withheld.

5. I became aware of this policy because I saw a ledger at Ladles James Island showing that credit card tips were not being paid to any hourly food service employees.

6. Based on my communications with other Ladles restaurant hourly food service employees, I believe withholding credit card tips from hourly food service employees is a policy at other Ladles locations as well.

7. I began pursuing this lawsuit in approximately May, 2016 and I am capable and committed to aggressively pursuing this litigation on behalf of the other class members who had credit card tips improperly withheld from them.

8. I am not aware of, nor can I imagine, any conflicts I could have with the interests in this lawsuit of any current or former Ladles employees who had credit card tips improperly withheld from them.

9. I could not be more pleased with my counsel, Ben LeClercq, Esq. In my experience working with him, he has been very knowledgeable and is always on top of everything. Mr. LeClercq was recommended to me by another attorney and I am aware of Mr. LeClercq's handling of other class action lawsuits.

10. I worked at Ladles James Island for approximately a year to a year and half. While I was working at Ladles James Island I viewed a ledger that showed that for an eleven day

period, there was a total of approximately $800.00 in credit card tips that should have gone to the hourly food service employees but did not.

11. Based on my knowledge and experience working at Ladles James Island, I believe that well over $100.00 in charged credit card tips were withheld from each hourly food service employee.

FURTHER AFFIANT SAYETH NAUGHT.

September 4, 2019

Craig Chappell

D

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-10-785
CRAIG CHAPPELL, on behalf of himself and others similarly situated, Plaintiff(s), v. Ladles Soups – James Island LLC; Ladlessoups, LLC; Ladles Soups At Cane Bay LLC; Ladles Soups At Citadel Mall LLP; Ladles Soups Calhoun LLC; Ladles Soups Cane Bay LLC; Ladles Soups Coosaw LLC; Ladles Soups Downtown Charleston, LLC; Ladlessoups Fresh Fields, LLC; Ladles Soups @ Freshfields Village, LLC; Ladlessoups Mainstreet, LLC; Ladles Soups Moncks Corner LLC; Ladlessoups Mount Pleasant, LLC; Ladles Franchise Development, LLC; Ladles Franchising Inc.; Ladles Fort Mill, LLC; Ladles Knightsville LLC; Ladles West Ashley; Teri Owens; Sue Allen, Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke, Stan Sutton, Carol Sutton, Jason Dalter, Kellie Henderson; Jane Doe 1-25 (Unknown Operating Company and Management Company Owners); John Doe 25-40 (Management Personnel) Defendants.	

AFFIDAVIT

I, Lani Charpia, declare under penalty of perjury the following:

1. I have been employed as an hourly paid employee at Ladles West Ashley located at 3125 Bees Ferry Rd., Charleston, SC 29414 since approximately February, 2018.

2. Currently, there are approximately five hourly paid food service employees at Ladles West Ashley.

3. In the year and a half that I have worked at Ladles West Ashley, I have seen approximately more than ten hourly paid food service employees come and go.

3. Ladles West Ashley has a policy of withholding all credit card tips from all hourly paid food service employees.

4. I am an hourly paid food service employee at Ladles West Ashley and all of my credit card tips have been withheld.

5. I am aware of the policy to withhold credit card tips because I have discussed the policy with other hourly paid employees at our regularly scheduled team meetings and they acknowledge that they do not receive credit card tips.

6. I have been instructed by my manager not to tell customers that servers do not get the tips.

7. I am capable and committed to aggressively pursuing this litigation on behalf of the other class members who had credit card tips improperly withheld from them.

8. I am not now aware of, nor do I believe I will later have, any conflicts with the interests in this lawsuit of any current or former Ladles employees who had credit card tips improperly withheld from them.

9. I have had regular communications with Ben LeClercq, Esq. regarding this lawsuit and my role in it and I believe that he has the competence and experience to adequately represent the interests of the Plaintiff class.

10. I have worked at Ladles West Ashley for approximately a year and half. I regularly see the end of day credit card reports and they show the amount of charged tips for the entire day. On a typical day, the amount of charged tips for the day is at least $100.

11. Based on my knowledge and experience working at Ladies West Ashley, I believe that well over $100.00 in charged credit card tips were withheld from each hourly food service employee.

FURTHER AFFIANT SAYETH NAUGHT.

September 9th, 2019

Lani Charpia

E

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-10-785
CRAIG CHAPPELL, on behalf of himself and others similarly situated, Plaintiff(s), LANIE CHARPIA, Applicant for Intervention v. Ladles Soups – James Island LLC; Ladlessoups, LLC; Ladles Soups At Cane Bay LLC; Ladles Soups At Citadel Mall LLP; Ladles Soups Calhoun LLC; Ladles Soups Cane Bay LLC; Ladles Soups Coosaw LLC; Ladles Soups Downtown Charleston, LLC; Ladlessoups Fresh Fields, LLC; Ladles Soups @ Freshfields Village, LLC; Ladlessoups Mainstreet, LLC; Ladles Soups Moncks Corner LLC; Ladlessoups Mount Pleasant, LLC; Ladles Franchise Development, LLC; Ladles Franchising Inc.; Ladles Fort Mill, LLC; Ladles Knightsville LLC; Ladles West Ashley; Teri Owens; Sue Allen, Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke, Stan Sutton, Carol Sutton, Jason Dalter, Kellie Henderson; Jane Doe 1-25 (Unknown Operating Company and Management Company Owners); John Doe 25-40 (Management Personnel) Defendants.	

MOTION TO INTERVENE

Lanie Charpia, ("Ms. Charpia"), by and through her undersigned attorneys, hereby moves this Court, pursuant to Rule 24 of the South Carolina Rules of Civil Procedure, for an Order in this

action allowing Ms. Charpia to intervene as a party for the purpose of protecting her right and interests in and to the subject matter of the pending litigation. This motion is based on Rule 24 and South Carolina case law confirming Ms. Charpia's entitlement to intervene in this action as a matter of right and in the alternative, as a matter of permission.

Rule 24(b)(2) of S.C.R.C.P. provides that anyone may be permitted to intervene in an action when an applicant's claim or defense and the main action have a question of law or fact in common [...] In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

To warrant intervention under rule 24(b)(2), the applicant should ordinarily show he has a claim or defense involving a question of law or fact common with the main action. *South Carolina Tax Com. v. Union County Treasurer*, 295 S.C. 257, 368 S.E.2d 72 (1988). Under Fed. R. Civ. P. 24(b), which is identical to the South Carolina Rule of Civil Procedure in all relevant respects, permissive intervention is wholly discretionary with a trial court, and a trial court will be reversed on appeal only for abuse of discretion. *Id.* In determining whether a party has a right to intervene in a suit, the court should consider the pragmatic consequences of the decision to permit or deny intervention and must examine each case in the context of its unique facts and circumstances). *Berkeley Elec.*, 302 S.C. at 189, 394 S.E.2d at 714. In exercising its discretion, the trial judge must be guided by the public policy underlying the rules of intervention which is that sound administrative procedure encourages the disposition of all claims or defenses in one action rather than a multiplicity of actions. *South Carolina Tax Com*, 295 S.C. at 257, 368 S.E.2d at 72. As explained earlier, whether granting a motion to intervene will delay or prejudice the rights of existing parties depends upon the timeliness of the motion, and the timeliness is assessed according

to the stage to which the action has progressed. *R & G Mortg. Corp. v. Fed. Home Loan Mortg. Corp.*, 584 F.3d 1, 8 (1st Cir. 2009)

Here, Ms. Charpia's claim and the main action have in common the following question of law: Ms. Charpia and other putative class members were entitled to credit card tips paid by customers and intended by customers for the staff, although wrongfully and deceptively withheld by the employers, which employers did not pay them their wage tips. By doing so, the employers violated the South Carolina Payment of Wages Act, and other applicable law, which law entitled them to the recovery of their earned wages in addition to damages. Also, Ms. Charpia's claim and the main action have in common a question of fact because the existing plaintiffs and Ms. Charpia worked for the same restaurant concept, Ladles Soup, though at different locations. See attached affidavit of Ms. Charpia, which confirms these facts, and also that Ladles directed its employees to lie to and deceive customers.

Moreover, intervention is important in this instance because defendants have previously attempted to obtain dismissal of one or more Ladles locations, and the addition of plaintiffs from other locations is important in establishing plaintiffs basis to proceed as a class, pursuant to a motion for class certification to be filed subsequently. Defendants have thwarted plaintiffs discovery requests, and have not responded to discovery, which seeks rightfully to discover additional facts, circumstances and employees who had credit card tips wrongfully withheld.

The granting of the permissive motion to intervene under rule 24(b)(2) will not unduly delay or prejudice the rights of the original parties since filing the motion at this stage of the proceeding when the parties are still in the discovery process can be considered timely. If it is timely, it cannot be deemed prejudicial to the rights of existing parties. Ms. Charpia respectfully request that this Court grant this Motion to Intervene as a party Plaintiff.

Respectfully submitted,

s/

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

August 22, 2019
Mt. Pleasant, South Carolina

CERTIFICATE OF SERVICE

I, Debbie Mathews, certify that on August 22, 2019, a true and correct copy of the foregoing **MOTION FOR CONTINUANCE** was served upon counsel for Defendants, via electronic mail as follows:

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

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

P. Brandt Shelbourne – brandt@shelbournelaw.com
Yvonne Franklin - civlit@shelbournelaw.com

131 E. Richardson Avenue
Summerville, SC 29483

Debbie Mathews

Debbie Mathews

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-10-785
CRAIG CHAPPELL, on behalf of himself and others similarly situated, Plaintiff(s), v. Ladles Soups – James Island LLC; Ladlessoups, LLC; Ladles Soups At Cane Bay LLC; Ladles Soups At Citadel Mall LLP; Ladles Soups Calhoun LLC; Ladles Soups Cane Bay LLC; Ladles Soups Coosaw LLC; Ladles Soups Downtown Charleston, LLC; Ladlessoups Fresh Fields, LLC; Ladles Soups @ Freshfields Village, LLC; Ladlessoups Mainstreet, LLC; Ladles Soups Moncks Corner LLC; Ladlessoups Mount Pleasant, LLC; Ladles Franchise Development, LLC; Ladles Franchising Inc.; Ladles Fort Mill, LLC; Ladles Knightsville LLC; Ladles West Ashley; Teri Owens; Sue Allen, Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke, Stan Sutton, Carol Sutton, Jason Dalter, Kellie Henderson; Jane Doe 1-25 (Unknown Operating Company and Management Company Owners); John Doe 25-40 (Management Personnel) Defendants.	

AFFIDAVIT

I, Lani Charpia, having been duly sworn, declare under penalty of perjury the following:

1. I have been employed as a server at Ladles West Ashley since approximately February, 2018, located at 3125 Bees Ferry Rd, Charleston, SC 29414.

2. I was hired "on the spot" when I walked in the location at that time, and this has been my first job.

3. I started working for probably 15 hours a week, and have worked as much as 30 hours a week since I started.

4. Normally all of the employees do everything – – everybody pitches in a little bit. Specifically, employees work in the kitchen, help out with serving, and also handle the register. I believe this is a common practice for all Ladles locations.

5. One night, approximately 6 or 7 months ago (after the filing of this action) I was working at the register, and a female customer asked me words to the effect of "who gets the tip if I leave it on a credit card?" I responded "I don't know – – all I know is that all I get are the cash tips." The customer appeared to me to be upset, saying words the fact that she thought that was misleading. She said that she wanted to speak to the manager. I did not hear the conversation between the customer and the manager, as I was in a back room talking with one of the other managers.

6. The other manager told me "don't ever tell a customer that the servers don't get the tips.

7. It must've been a heated conversation between the customer and the manager, Taylor, because Taylor was crying when she came back into the back.

8. I have had other customers ask me words to the effect of "who gets the credit card tips." That of course makes me feel very uncomfortable, and I usually will say words to the effect of "I'm not allowed to say."

FURTHER AFFIANT SAYETH NAUGHT.

August 22, 2019

Lani Charpia

Lani Charpia

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON CRAIG CHAPPELL Plaintiff, vs. LADLES SOUPS JAMES ISLAND LLC, ET AL. Defendant.	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-10-785 **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**

Plaintiff's Attorney: Ben Le Clercq, Bar No. 65754 Address: 708 S. Shelmore Blvd, Suite 202 Mount Pleasant, SC 29464 Phone: 843-722-3523Fax 843-352-2977 E-mail: ben@leclercqlaw.comOther: debbie@leclercqlaw.com	Defendant's Attorney: Paul B. Ferrara, Bar No. 70511 Address: 8887 Old University Blvd, Suite 200, North Charleston, SC 29406 Phone: 843-569-5111 Fax843-569-5411 E-mail: paul@ferraralawfirm.netOther: _____

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

SECTION I: Hearing Information

Nature of Motion: Amended Motion to Compel Discovery Responses
Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ **YES**/☐ **NO**

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

_____ October 4, 2019
Signature of Attorney for ☒ Plaintiff / ☐ Defendant Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: $_____
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE CODE _____
☐ Other:	Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-10-785

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

Plaintiff(s),

v.

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

Defendants.

PLAINTIFFS' AMENDED MOTION TO COMPEL DISCOVERY RESPONSES TO PLAINTIFS' FIRST INTERROGATORES AND FIRST REQUESTS FOR PRODUCTION FROM ALL DEFENDANTS

FILED
2019 OCT -4 PM 12:33
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Plaintiffs, by and through undersigned counsel, amend its previously filed Motion to Compel to include all Defendants and move this Honorable Court to order that all Defendants respond fully to Plaintiff's discovery requests.

Defendants Ladles Soup – James Island LLC; Ladles Soups Coosaw LLC; Ladles Soups Downtown Charleston, LLC; Ladlessoups Fresh Fields, LLC; Ladles Soups@ Freshfields Village,

LLC; Ladles Soups Moncks Corner LLC; Ladles Fort Mill, LLC; Ladles Knightsville LLC; Ladles West Ashley; Terri Owens; Steve Traeger; and Kellie Henderson, through their attorney, Paul B. Ferrara, III, have failed to respond at all since being served with the requests on May 24, 2019. **Ex. A (Email serving First Interrogatories and First Requests for Production); Ex. A.2 (First Interrogatories and First Requests for Production).** Pursuant to SCRP Rule 11, Plaintiffs' counsel communicated with Defendants' counsel by email on July 12, 2019 and August 14, 2019 to resolve the issue. **Ex. B (emails to counsel for Defendants).** Over 120 days have elapsed without Defendants producing any response at all and without Defendants even requesting an extension. Plaintiffs also ask the Court to find that Defendants have waived objections to all such requests due to its failure to provide these discovery responses.

Defendant Ladlessoups, Mount. Pleasant, LLC; Erik Dyke; and Julie Dyke through their attorney, Brandt Shelbourne, have failed to fully answer or provide valid objections to the First Set of Interrogatories and Requests for Production served on Defendants by Plaintiff. **Ex. C (Defendant's Answers and Responses to Plaintiff's First Set of Interrogatories and Requests for Production).**

Defendants Ladles Franchising, Inc.; Ladles Franchise Development, LLC; Ladlessoups, LLC; Sue Allen; and Tracy Allen through their attorneys, Kerry Koon and Evan Lacke, have failed to fully answer or provide valid objections to the First Set of Interrogatories and Requests for Production served on Defendants by Plaintiff. **Ex. D (Defendant's Answers and Responses to Plaintiff's First Set of Interrogatories and Requests for Production).**

[SIGNATURE BLOCK ON NEXT PAGE]

Respectfully Submitted,

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

October 4, 2019
Mt. Pleasant, South Carolina

CERTIFICATE OF SERVICE

I, Debbie Mathews, certify that on October 4, 2019, a true and correct copy of the foregoing **PLAINTIFF'S AMENDED MOTION TO COMPEL DISCOVERY RESPONSES TO PLAINTIFFS' FIRST INTERROGATORIES AND FIRST REQUESTS FOR PRODUCTION FROM DEFENDANTS** was served upon counsel for Defendants, via electronic mail as follows:

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

Paul B. Ferrera, III - paul@ferraralawfirm.net
Janel Ferrara - janel@ferraralawfirm.net

Jessica Weiss - j.weiss@ferraralawfirm.net
2300 Otranto Road
North Charleston, SC 29406

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

Debbie Mathews

Debbie Mathews

Gmail by Google

Debbie Mathews <debbie@leclercqlaw.com>

Attached Discovery Requests

1 message

Ben Le Clercq <ben@leclercqlaw.com> Fri, May 24, 2019 at 4:50 PM
To: Evan Lacke <elacke@lackelawfirm.com>, Paul Ferrara <paul@ferraralawfirm.net>, Janel Ferrara <janel@ferraralawfirm.net>, Alex Fadoul <alex@ferraralawfirm.net>, "kerrykoon@hotmail.com" <kerrykoon@hotmail.com>, Brandt Shelbourne <brandt@shelbournelaw.com>, Yvonne Franklin <civlit@shelbournelaw.com>
Cc: Scott Riddell <scott@leclercqlaw.com>, Debbie Mathews <debbie@leclercqlaw.com>, clerks@leclercqlaw.com

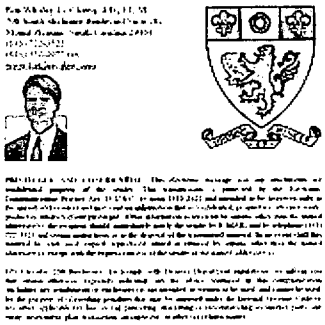
Ladies and Gentlemen,

Attached please find Plaintiffs' Interrogatories and Requests for Production.

With kind regards for a pleasant holiday weekend, I am

Respectfully,

4 attachments

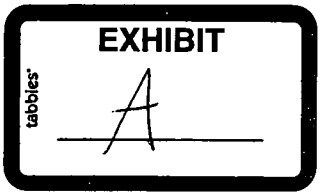


Ben Le Clercq Email Signature 2014.JPG
118K

2019 05 24 1624 First Interrogatories FINAL.pdf
140K

2019 05 24 1125 RFP FINAL.pdf
109K

Ben Whaley Le Clercq, J.D., LL.M. 6.vcf
19K



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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

Plaintiff(s),

v.

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

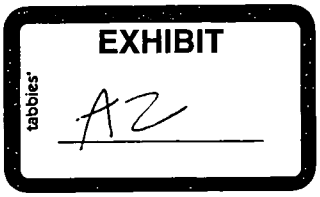
Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-10-785

PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION



PLAINTIFFS' FIRST REQUESTS FOR PRODUCTION

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

INSTRUCTIONS AND DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

REQUESTS FOR PRODUCTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Respectfully submitted,

s/Ben Le Clercq

Ben Le Clercq
(S.C. Bar #65754, U.S. District Court # 7453)
Scott Riddell
(S.C. Bar #102809, U.S. District Court #12543)
Le Clercq Law Firm
708 South Shelmore Blvd. #202
Mount Pleasant, SC 29464
Phone (843) 722-3523
Fax (843) 352-2977
Ben@LeClercqLaw.com
Scott@LeClercqLaw.com
Counsel for Plaintiff

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

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

s/Debbie Matthews

Debbie Mathews

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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

Plaintiff(s),

v.

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

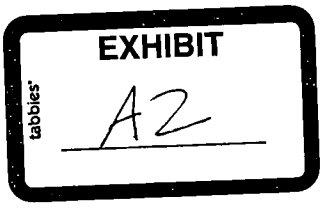
Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-10-785

PLAINTIFF'S FIRST INTERROGATORIES



PLAINTIFFS'] FIRST INTERROGATORIES

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

INSTRUCTIONS AND DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

INTERROGATORIES

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

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

a. The kind of insurance, indemnity or bond;

b. The name of the company or companies, including any excess or umbrella carriers, which you claim provide coverage;

c. The policy number or policies numbers of any applicable policy;

d. The limit or limits of liability of each policy.

e. The named insured of each policy.

f. Whether the insurance carrier has accepted or denied coverage.

g. Whether you are being defended by the insurance carrier under a reservation or rights.

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

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

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

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

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

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

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

b. detailed summary of the expert's opinions regarding this case and the basis for them;

c. summary of the expert's knowledge, skill, experience, training, or education as it applies to the specific field of expertise alleged in this case;

d. description of the claims and lawsuits in which the expert has given opinions, including the names and addresses of the parties and their attorneys, and the location of any depositions and recorded statements the expert has given in cases other than this one;

e. the percentage of expert's practice devoted to consulting work in legal claims, the percentage attributable to the claimant/plaintiff as opposed to the defendant, and the amount of income derived from such consulting in the last 2 years;

f. the specifics of any publication in speaking engagements given by the expert on matters relating to the expert's profession; and

g. the names of publications considered by the expert to be learned treatises as described in the Federal or South Carolina rule of evidence 803(18).

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

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

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

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

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

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

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

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

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

a. How were you named in the lawsuit (e.g. plaintiff, defendant, intervenor, etc.)?

b. What was the nature of each claim and defense?

c. The date, location, and title of the court in which the action was commenced.

d. The names of all the parties other than yourself involved in the action.

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

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

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

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

a. The name listed in the current articles of organization;

b. All of the names used by the company during the past 10 years and the dates each was used;

c. The name and address of each member;

d. The name and address of each manager;

e. The date and place of formation;

f. The address of the principal place of business; and

g. The states in which it is registered to do business.

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

a. all financial accounts, including bank, checking, savings, money market, investment, and/or securities accounts currently held by or for your benefit, and state current balances, location of the accounts, and name on accounts;

b. any and all certificates of deposit, stock certificates in any publicly held or closely held corporation, as well as any bonds owned by each and every Defendant, membership interest in any and all limited liability companies, partnership interest in any and all partnerships, and any and all interest in any other form of business entity, including joint ventures, whether domestic or offshore, detailing without limitation and with particularity percentages of ownership, amount of revenue generated for each entity, etc.

c. any and all titles to vehicles, mobile homes, or watercraft owned by each and every Defendant, detailing a description of each item including year, model, serial number, vehicle identification number, present value and the amount of any lien thereon;

d. any and all deeds, mortgages, notes, contracts of sale, and settlement or closing statements relating to any real estate transactions involving each and every Defendant;

e. any and all real property, including without limitation (county, state, jurisdiction), whether domestic or offshore for each and every Defendant;

f. any and all life insurance policies owned by each and every Defendant, along with any information pertaining to any loans outstanding on any such policies;

g. any and all items of jewelry or art owned by each and every Defendant, including a description of each item and its most recent appraised valuation;

h. any and all leases of realty or personalty in favor of each and every Defendant;

i. any and all books, records, documents, or writings concerning the financial status of Defendants not herein before specified, including any and all interest in any form of trust; and

j. any and all tax receipts, tax returns or supplemental forms, and any and all other documents, forms or letters filed with United States Internal Revenue Service, and any other state tax authority within the last 5 years.

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

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

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

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

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

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

29. Does Respondent have an employee handbook?

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

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

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

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

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

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

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

37. Describe Respondent's accounting software.

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

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

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

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

Respectfully submitted,

s/Ben Le Clercq

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

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

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

s/Debbie Matthews

Debbie Mathews

Gmail by Google

Debbie Mathews <debbie@leclercqlaw.com>

Chappell v Ladles Defendants Discovery Responses

1 message

Debbie Mathews <Debbie@leclercqlaw.com> Fri, Jul 12, 2019 at 9:23 AM
To: Paul Ferrara <paul@ferraralawfirm.net>, Janel Ferrara <janel@ferraralawfirm.net>, Jessica Weiss <j.weiss@ferraralawfirm.net>
Cc: "Ben Whaley Le Clercq, J.D., LL.M." <Ben@leclercqlaw.com>, Scott Riddell <scott@leclercqlaw.com>

Hello,

We served discovery on your office on May 24, 2019, and have not received the responses as of today. Please serve the responses no later than Tuesday, July 16, 2019. Please consider this our Rule 11 communication.

Debbie Mathews
Legal Assistant
Le Clercq Law Firm
708 South Shelmore Blvd., Suite 202
Mount Pleasant, SC 29464
Tel: 843-722-3523
Fax: 843-352-2977
debbie@leclercqlaw.com
www.leclercqlaw.com

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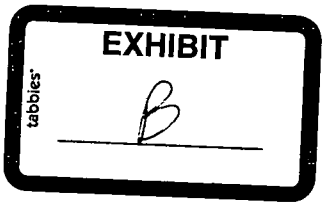

Gmail by Google

Debbie Mathews <debbie@leclercqlaw.com>

Re: Chappell v Ladies Defendants Discovery Responses

1 message

Debbie Mathews <Debbie@leclercqlaw.com> Wed, Aug 14, 2019 at 3:41 PM
To: Paul Ferrara <paul@ferraralawfirm.net>, Janel Ferrara <janel@ferraralawfirm.net>, Jessica Weiss <j.weiss@ferraralawfirm.net>
Cc: "Ben Whaley Le Clercq, J.D., LL.M." <Ben@leclercqlaw.com>, David Ashley <David@leclercqlaw.com>

Hello,

We have not received the discovery responses. Can you let me know when we will receive them.
Thanks.

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EXHIBIT
tabbies
B

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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

Plaintiff(s),

v.

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

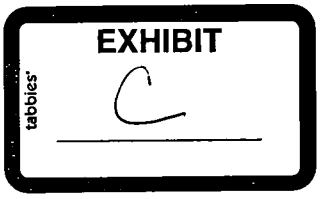
Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-10-00785

LADLES SOUPS OF MOUNT PLEASANT, LLC, ERIK DYKE AND JULIE DYKE RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES



TO: CRAIG CHAPPELL AND HIS ATTORNEY BENJAMIN LE CLERCQ, ESQ.:

Defendants, Ladles Soups Mount Pleasant LLC, Erik Dyke and Julie Dyke, (hereinafter referred to as "Defendants") by and through their undersigned counsel, respond to Plaintiff, Craig Chappell's First Set of Interrogatories as follows:

INTERROGATORIES

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

Response:

Erik Dyke
c/o Shelbourne Law
131 E. Richardson Ave
Summerville, SC 29483

Mr. Dyke is the owner and franchisee of Ladles Soups Mount Pleasant in the above captioned action and is expected to testify regarding his knowledge of the facts and circumstances in the pleadings. Upon information and belief, Mr. Dyke has not made any written or recorded statements regarding this matter beyond those found in its pleadings, discovery responses or documents in this matter.

Julie Dyke
c/o Shelbourne Law
131 E. Richardson Ave
Summerville, SC 29483

Mrs. Dyke is a co-owner and franchisee of Ladles Soups Mount Pleasant in the above captioned action and is expected to testify regarding her knowledge of the facts and circumstances in the pleadings. Upon information and belief, Mrs. Dyke has not made any written or recorded statements regarding this matter beyond those found in its pleadings, discovery responses or documents in this matter

2. Does Respondent have liability insurance, or is there any other form of indemnity or bond, through which Respondent is or might be insured in any manner for the damages, claims,

or actions that are the subject of the pleadings? If so, please provide the following information for each policy:

a. The kind of insurance, indemnity or bond;

b. The name of the company or companies, including any excess or umbrella carriers, which you claim provide coverage;

c. The policy number or policies numbers of any applicable policy;

d. The limit or limits of liability of each policy.

e. The named insured of each policy.

f. Whether the insurance carrier has accepted or denied coverage.

g. Whether you are being defended by the insurance carrier under a reservation or rights.

Response: **Defendant does not have any applicable insurance.**

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

Response: **In response to Interrogatory number 3, Defendants adopt and reiterate their response to Interrogatory number 1.**

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

Response: **Defendants Erik Dyke and Julie Dyke.**

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

Response: **Plaintiff alleged that that Defendants failed to pay him wages and failed to turn over tips paid on credit card charges. Plaintiff has not had a contractual relationship with Defendants nor has Plaintiff ever been employed by the Defendant's. Plaintiff admitted in his deposition that Defendants did not take anything from him. Further, Defendants have never withheld credit card tips from employees.**

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

Response: **Defendants do not know of any factual basis for Plaintiff's causes of action.**

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

Response: **Defendants have attached all documents in their possession at this time. Defendants reserve the right to supplement their answers to Plaintiff's Interrogatories as more information is obtained through the discovery process.**

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

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

b. detailed summary of the expert's opinions regarding this case and the basis for them;

c. summary of the expert's knowledge, skill, experience, training, or education as it applies to the specific field of expertise alleged in this case;

d. description of the claims and lawsuits in which the expert has given opinions, including the names and addresses of the parties and their attorneys, and the location of any depositions and recorded statements the expert has given in cases other than this one;

e. the percentage of expert's practice devoted to consulting work in legal claims, the percentage attributable to the claimant/plaintiff as opposed to the defendant, and the amount of income derived from such consulting in the last 2 years;

f. the specifics of any publication in speaking engagements given by the expert on matters relating to the expert's profession; and

g. the names of publications considered by the expert to be learned treatises as described in the Federal or South Carolina rule of evidence 803(18).

Response: **Defendants have not obtained an expert witness at this time but reserve the right to supplement their answers to Plaintiff's Interrogatories as more information is obtained through the discovery process. Defendants will reply on any expert retained by the other Defendants or Plaintiff in this case and all written responses to the discovery listing them as experts.**

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

Response: **Defendants are not aware of any party improperly identified, other than Defendants should not be named in this suit.**

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

Response: **Defendants are the sole owners and members of Ladles Soups Mount Pleasant. Ladles is an independent LLC owned by the Defendants. Defendants purchased a franchise from co-Defendant Ladles Franchising Inc. which has no control or oversight into Defendants' business. Defendants have not worked on or participated in the issues and facts described in this matter.**

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

Response: **Not applicable.**

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

Response: **Defendants object to this Interrogatory as it seeks information not relevant to the subject matter of this lawsuit or not calculated to lead to admissible evidence.**

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

Response: **Defendants object to this Interrogatory as it seeks information subject to Attorney-Client privilege and calls for legal conclusions. Without waiving these objections, Defendants are unaware of any communications or meetings.**

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

Response: **Defendants had no written or oral contract with the Plaintiff as Plaintiff was never an employee of Defendants.**

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

Response: **Defendants object to the production of this information as it is irrelevant, nor calculated to lead to admissible evidence. Without waiving these objections, www.facebook.com/Ladles-Soups-Mount Pleasant and on Twitter – Follow@Ladles Soups.**

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

Response: **Defendants have attached all documents in their possession at this time. Defendants reserve the right to supplement their answers to Plaintiff's Interrogatories as more information is obtained through the discovery process.**

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

a. How were you named in the lawsuit (e.g. plaintiff, defendant, intervenor, etc.)?

b. What was the nature of each claim and defense?

c. The date, location, and title of the court in which the action was commenced.

d. The names of all the parties other than yourself involved in the action.

Response: **Defendant, LLC has not been a party to a lawsuit.**

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

Response: **None.**

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

Response: **Defendants object on the grounds that this Interrogatory is irrelevant, nor calls for discovery of admissible evidence. Without waiving objections, Defendants have attached all documents in their possession at this time. Defendants reserve the right to supplement their answers to Plaintiff's Interrogatories as more information is obtained**

through the discovery process. Defendants do not regularly produce profit and loss statements, balance sheets and income statements.

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

Response: Defendants have attached all documents in their possession at this time. Defendants reserve the right to supplement their answers to Plaintiff's Interrogatories as more information is obtained through the discovery process.

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

a. The name listed in the current articles of organization;

b. All of the names used by the company during the past 10 years and the dates each was used;

c. The name and address of each member;

d. The name and address of each manager;

e. The date and place of formation;

f. The address of the principal place of business; and

g. The states in which it is registered to do business.

Response: Ladles Soups Mount Pleasant, LLC
Members - Erik Dyke and Julie Dyke, c/o Shelbourne Law, 131 E. Richardson Ave., Summerville, SC 29483
Incorporated in May 3, 2010 in South Carolina

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

a. all financial accounts, including bank, checking, savings, money market, investment, and/or securities accounts currently held by or for your benefit, and state current balances, location of the accounts, and name on accounts;

b. any and all certificates of deposit, stock certificates in any publicly held or closely held corporation, as well as any bonds owned by each and every

Defendant, membership interest in any and all limited liability companies, partnership interest in any and all partnerships, and any and all interest in any other form of business entity, including joint ventures, whether domestic or offshore, detailing without limitation and with particularity percentages of ownership, amount of revenue generated for each entity, etc.

c. any and all titles to vehicles, mobile homes, or watercraft owned by each and every Defendant, detailing a description of each item including year, model, serial number, vehicle identification number, present value and the amount of any lien thereon;

d. any and all deeds, mortgages, notes, contracts of sale, and settlement or closing statements relating to any real estate transactions involving each and every Defendant;

e. any and all real property, including without limitation (county, state, jurisdiction), whether domestic or offshore for each and every Defendant;

f. any and all life insurance policies owned by each and every Defendant, along with any information pertaining to any loans outstanding on any such policies;

g. any and all items of jewelry or art owned by each and every Defendant, including a description of each item and its most recent appraised valuation;

h. any and all leases of realty or personalty in favor of each and every Defendant;

i. any and all books, records, documents, or writings concerning the financial status of Defendants not herein before specified, including any and all interest in any form of trust; and

j. any and all tax receipts, tax returns or supplemental forms, and any and all other documents, forms or letters filed with United States Internal Revenue Service, and any other state tax authority within the last 5 years.

Response: Defendants object to this Interrogatory on the grounds that it is compound, unreasonable, overly broad, unduly burdensome and expensive, irrelevant and not reasonably calculated to lead to discoverable evidence.

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

Response: Defendants do not know the name and location of every franchise.

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

Response: Defendants object to this Interrogatory as it calls for production of irrelevant information or is not conducive to lead to the discovery of admissible evidence.

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

Response: Defendants object to this Interrogatory on the grounds that it is irrelevant and unduly burdensome.

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

Response: Defendants object to this Interrogatory on the grounds that it seeks information not relevant to the subject matter of this lawsuit nor conducive to lead to admissible evidence. This request is also an invasion of individuals right to privacy as they are not parties to this matter. Plaintiff has not obtained class certification.

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

Response: **Defendants purchased a franchise and are governed by the Franchise Agreement between the Franchisor and Franchisee.**

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

Response: **Defendants Erik Dyke and Julie Dyke.**

29. Does Respondent have an employee handbook?

Response: **Defendants object to this Interrogatory as it is vague and unduly burdensome as there is no specified time period requested. Without waiving these objections, Defendants have attached all documents in their possession at this time. Defendants reserve the right to supplement their answers to Plaintiff's Interrogatories as more information is obtained through the discovery process.**

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

Response: **Defendants object to this Interrogatory as it is unclear as to what the Plaintiff is seeking.**

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

Response: **Defendants object to this Interrogatory on the grounds that it assumes that Defendants retain credit card tips and does not provide credit card tips to its employees. Without waiving these objections, Defendants do not have a policy of retaining credit card tips from employees.**

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

Response: **This has always been Defendants' policy to give credit card tips to the employees.**

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

Response: **Defendants object to this Interrogatory on the grounds that it assumes that Defendants retain credit card tips and does not provide credit card tips to its employees. Without waiving these objections, Defendants do not have a policy of retaining credit card tips from employees.**

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

Response: **Defendants have not had any meetings.**

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

Response: **Defendants pay cash tips to employees.**

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

Response: **Defendants did not fire Craig Chappell as Craig Chappell was never employed by the Defendants.**

37. Describe Respondent's accounting software.

Response: **Defendants object to this Interrogatory on the grounds that it is overly broad and unduly burdensome and not calculated to lead to the discovery of admissible evidence.**

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

Response: **Defendants Erik Dyke and Julie Dyke handle all of this.**

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

Response: **Defendants object to this Interrogatory on the grounds that it assumes facts not in evidence. Without waiving these objections, Defendants do not have a policy of retaining credit card tips as Defendants does not retain credit card tips from employees.**

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

Response: **No employees have complained.**

RESPECTFULLY SUBMITTED,

By: _____

P. Brandt Shelbourne, Esquire (SCB 15143)
SHELBOURNE LAW FIRM
131 E. Richardson Avenue
Summerville, SC 29483
(843) 871-2210
ATTORNEYS FOR DEFENDANTS LADLES SOUPS OF MOUNT PLEASANT, LLC, ERIK DYKE AND JULIE DYKE

June 25th, 2019
Summerville, South Carolina

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Shelbourne Law, do hereby certify that a true and correct copy of Defendants Ladles Soups of Mount Pleasant, LLC, Erik Dyke and Julie Dyke Responses to Plaintiff's First Set of Interrogatories which this certificate is affixed was served upon the following parties via hard copy and/or electronic mail to the following:

Ben LeClercq, Esq. LeClerq Law Firm 708 South Shelmore Blvd., Ste.202 Mount Pleasant, SC, 29406 *Attorney for Plaintiff*	Kerry Koon, Esq. 147 Wappoo Creek Dr. Wappoo Centre, Suite 203 Charleston, SC 29491 kerrykoon@hotmail.com *Attorney for Defendants, Ladles Franchising, Inc.; Ladessoups, LLC, and Tracy Allen*
Paul B. Ferrara, III, Esq. Ferrara Law 8887 Old University Blvd. 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*	

Date: June 25, 2019

Yvonne Franklin, Paralegal at Shelbourne Law

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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

Plaintiff(s),

v.

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

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-10-785

LADLES SOUPS OF MOUNT PLEASANT, LLC, ERIK DYKE AND JULIE DYKE RESPONSES TO PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION

TO: CRAIG CHAPPELL AND HIS ATTORNEY BENJAMIN LE CLERCQ, ESQ.:

Defendants, Ladles Soups Mount Pleasant LLC, Erik Dyke and Julie Dyke, (hereinafter referred to as "Defendants") by and through their undersigned counsel, respond to Plaintiff, Craig Chappell's First Requests for Production as follows:

REQUESTS FOR PRODUCTION

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

Response: Defendants will produce copies of all documents responsive to this request to produce in their possession at this time.

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

Response: Defendants will produce copies of all documents responsive to this request to produce in their possession at this time.

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

Response: Defendants will produce copies of all documents responsive to this request to produce in their possession at this time.

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

Response: None at this time. Furthermore, Defendants have attached all documents in their possession at this time and reserves the right to supplement through the discovery process.

5. Any and all written communications, documents, and things relating to,

supporting, refuting, or involving any of the averments and defenses set forth in any pleading you have submitted in this matter.

Response: Defendants will produce copies of all documents responsive to this request to produce in their possession at this time.

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

Response: None at this time. Defendants reserve the right to supplement through the discovery process.

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

Response: Defendants have not obtained an expert witness at this time. However, Defendants reserve the right to supplement their answer to Plaintiff's Request to Produce as more information is obtained through the discovery process.

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

Response: Defendants do not have any e-mails, faxes, letters, text messages and other written communication with the Plaintiff as Plaintiff was not an employee of the Defendants. Defendants are unaware of specific e-mails, faxes, letters, text messages and other written communication with Defendants, however, Defendants will produce copies of all documents responsive to this request to produce in their possession at this time.

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

Response: Defendants object on the grounds that this calls for production of information protected by the Attorney-Client Privilege and by Attorney Work Product doctrine.

10. Provide for inspection all computers, electronic devices, and telephones containing

relevant production, ESI, or electronic data, including those described in response to Interrogatory number 12.

Response: **Objection. This Request for Production is overly broad, unduly burdensome, or not reasonably calculated to lead to discovery of admissible evidence.**

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

Response: **Objection. Defendants do not owe, nor have paid any other party other than franchise fees which are not relevant or calculated to lead to discovery of admissible evidence.**

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

Response: **Objection. This Request for Production is overly broad, unduly burdensome. Without waiving these objections, Defendants will produce the federal and state tax returns for the last five years for Ladles Soups of Mount Pleasant, LLC.**

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

Response: **Objection. This Interrogatory calls for production of irrelevant information and information not calculated to lead to discovery of admissible evidence.**

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

Response: **None.**

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

Response: **None.**

16. Produce each and every post, note, mention, story, document, or other item made by Respondent during the last seven years, up through and including the date of trial, on any and

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

Response: **None.**

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

Response: **Defendants do not have an organization chart for its business.**

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

Response: **Defendants will produce copies of all documents responsive to this request to produce in their possession at this time, but do not have a handbook.**

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

Response: **Defendants object on the grounds that it is irrelevant nor calculated to lead to admissible evidence.**

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

Response: Defendants object on the grounds that it is irrelevant nor calculated to lead to admissible evidence.

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

Response: In house.

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

Response: Defendants will produce copies of all documents responsive to this request to produce in their possession at this time.

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

Response: Defendants object on the grounds that it is irrelevant nor calculated to lead to admissible evidence.

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

Response: Objection. This Request for Production is an invasion of an employee and/or independent contractor's privacy who are not a party to this action. In addition, this request is unduly burdensome, expensive and not reasonably calculated to lead to discovery of admissible evidence.

25. A copy of each and every piece of written communication, email, text, fax, letter, or otherwise, arising from or relating to Respondent's policy of retaining credit card tips rather than pay them to employees. As described above, every RFP herein shall be deemed a continuing RFP and Respondent must supplement his answers promptly, if and when he obtains relevant

production in addition to, or in any way inconsistent with, his initial production in accordance with the applicable Rules of Civil Procedure.

Response: **Defendants do not have a policy of retaining tips so there are no such documents.**

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

Response: **Defendants object as this request calls for production of irrelevant information or is not calculated to lead to discovery of admissible evidence.**

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

Response: **None.**

RESPECTFULLY SUBMITTED,

By: _____

P. Brandt Shelbourne, Esquire (SCB 15143)
SHELBOURNE LAW FIRM
131 E. Richardson Avenue
Summerville, SC 29483
(843) 871-2210
ATTORNEYS FOR DEFENDANTS LADLES SOUPS OF MOUNT PLEASANT, LLC, ERIK DYKE AND JULIE DYKE

June 27th, 2019
Summerville, South Carolina

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Shelbourne Law, do hereby certify that a true and correct copy of Defendants Ladles Soups of Mount Pleasant, LLC, Erik Dyke and Julie Dyke Responses to Plaintiff's First Requests for Production which this certificate is affixed was served upon the following parties via hard copy and/or electronic mail to the following:

Ben LeClercq, Esq. LeClerq Law Firm 708 South Shelmore Blvd., Ste.202 Mount Pleasant, SC, 29406 *Attorney for Plaintiff*	Kerry Koon, Esq. 147 Wappoo Creek Dr. Wappoo Centre, Suite 203 Charleston, SC 29491 kerrykoon@hotmail.com *Attorney for Defendants, Ladles Franchising, Inc.; Ladessoups, LLC, and Tracy Allen*
Paul B. Ferrara, III, Esq. Ferrara Law 8887 Old University Blvd. 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*	

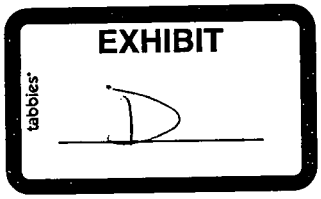
Date: June 25, 2019

Yvonne Franklin, Paralegal at Shelbourne Law

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 ANSWERS TO PLAINTIFF'S FIRST INTERROGATORIES**
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.	)	
	)	

COMES NOW, Defendants Ladles Franchising, Inc., Ladlessoups, LLC, Sue Allen, and Tracy Allen and answers Plaintiff's First Set of Interrogatories as follows:

INTERROGATORIES



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

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

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

RESPONSE: None.

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

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

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

RESPONSE: Suzie Allen

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

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

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

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

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

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

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

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

RESPONSE: See Responses to Request for Production.

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

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

RESPONSE: None.

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

RESPONSE: None.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29. Does Respondent have an employee handbook?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37. Describe Respondent's accounting software.

RESPONSE: None.

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

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

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

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

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

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

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

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

RESPONSE: With regard to Ladlessoups, LLC, no.

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

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

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

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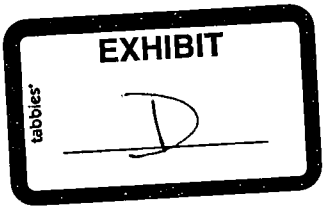
August 21, 2019
Charleston, South Carolina

STATE OF SOUTH CAROLINA,	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2018-CP-10-00785
	)	
CRAIG CHAPPELL, on behalf of himself and Others similarly situated,	)	**DEFENDANTS' LADLES FRANCHISING, INC., LADLESSOUPS, LLC, SUE ALLEN, AND TRACY ALLEN'S RESPONSE TO PLAINTIFF'S REQUESTS FOR PRODUCTION**
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.	)	
	)	

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

DOCUMENTS REQUESTED



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

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

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

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

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

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

RESPONSE: See Response to Request for Production No. 2, above. Respondents object to this Request for Production as overly broad and not designed to lead to admissible or discoverable evidence.

4. All statements given by respondent or any witness identified by Respondent or other witness to the facts relevant to this case that are in the possession of Respondent or his counsel, whether written or recorded, that relate in any way to the allegations of the complaint in this matter, or an answer by any Defendant.

RESPONSE: Respondent directs Plaintiff to refer to (1) Sue Allen's and Tracy Allen's Affidavits which were filed in support of Defendants Ladles Franchising, Inc., Ladlessoups, LLC, Sue Allen, and Tracy Allen's Notice of Motion and Motion to Disallow Class Certification in this matter and (2) Craig's Chappell's Deposition transcript, both of which are in possession of and/or have been served upon Plaintiff.

5. Any and all written communications, documents, and things relating to, supporting, refuting, or involving any of the averments and defenses set forth in any pleading you have submitted in this matter.

RESPONSE: See Responses to Requests for Production Nos. 1, 2, and 4, above.

6. Copies of all documents produced by third parties pursuant to subpoenas issued in this case or any request made pursuant to the Freedom of Information Act or other request by Respondent or Respondent's counsel.

RESPONSE: None.

7. Any and all documents identified in response to Interrogatory number 8, relating to expert witnesses.

RESPONSE: None.

8. All e-mails, faxes, letters, text messages and other written communication between each and every Defendant and each and every Plaintiff.

RESPONSE: See Responses to Requests for Production No. 2, above.

Respondents object to this Request for Production as overly broad and not designed to lead to admissible or discoverable evidence.

9. If Respondent is a legal entity, produce all internal communications relating to this matter, including without limitation all e-mails, faxes, letters, text messages and other written communications between and among Respondent's employees, officers, directors, agents and counsel.

RESPONSE: With regard to Respondent Ladles Franchising, Inc., please see Responses to Requests for Production No. 2, above.

With regarding to Ladlessoups, LLC, none exist.

Respondents object to this Request for Production as overly broad and not designed to lead to admissible or discoverable evidence. Respondents also object to this request to the extent that it requests attorney-client privileged communications and documents.

10. Provide for inspection all computers, electronic devices, and telephones containing relevant production, ESI, or electronic data, including those described in response to Interrogatory number 12.

RESPONSE: Respondents object to this Request for Production as overly broad and not designed to lead to admissible or discoverable evidence.

With regard to Sue Allen's and Tracy Allen's business cell phones and computers, those items are currently being used by those individuals, who now reside in Ohio. Respondents Sue Allen and Tracy Allen cannot be deprived of business property which they currently use for the purposes of ongoing business operations.

Respondents also object to this request to the extent that it requests attorney-client privileged communications and documents.

11. Produce a complete, itemized accounting and financial summary of all amounts paid and/or owed to you by any other party to this action for the period January 1, 2015 to present.

RESPONSE: Respondents object to this Interrogatory as overly broad and not designed to lead to admissible or discoverable evidence. Should Respondents be ordered to produce this information, it shall only be pursuant to a protective order.

12. All federal and state tax returns, income statements, balance sheets, and profit/loss statements for Respondent during the last five years, up through and including the date of trial.

RESPONSE: Respondents object to this Interrogatory as overly broad and not designed to lead to admissible or discoverable evidence. Should Respondents be ordered to produce this information, it shall only be pursuant to a protective order.

13. All Respondent's bank statements from the last five years, up through and including the date of trial.

RESPONSE: Ladlessoups, LLC 2015 and 2016 bank statements for Suntrust Acct. No. 1000037141248 are produced and attached hereto.

Respondents object to this Interrogatory as overly broad and not designed to lead to admissible or discoverable evidence, particularly as it requests Respondent Sue Allen and Tracy's Allen's personal bank account records. Should Respondents be ordered to produce this information, it should only be pursuant to a protective order.

14. For any individual Respondent, produce any resume or curriculum vitae you have created or used from the last five years, up to and including the date of trial.

RESPONSE: None.

15. Any and all documents evidencing or relating to postings, blogs, whether statements on any Internet were social media site in which you discuss any matter or issue arising from or relating to this action.

RESPONSE: None.

16. Produce each and every post, note, mention, story, document, or other item made by Respondent during the last seven years, up through and including the date of trial, on any and all membership–based Internet websites which relates to or in any way references any party or witness to this action, or any issue or claim in this matter, and/or the allegations set forth in the complaint or any answer filed in this matter. For purposes of this RFP, "membership–based Internet websites" shall include social media websites (including but not limited to Myspace, Flickr, YouTube, Facebook, classmates, Bebo, Deviant Art, LinkedIn, Meetup, Gather, My Yearbook, Friendster, Google Plus, or Web Shots), blogging websites (including but not limited to Blogger, Live Journal, twitter, Windows Live Spaces, WordPress, Blogspot, Vox, or Xanga), dating websites (including but not limited to Adult Friend Finder, Ok Cupid, eHarmony, match, or Fubar), and any other personal websites for which Respondent has created, used, or maintained a personal account, username, or profile at any time for the last seven years up to the present.

RESPONSE: None. Respondents object to this Interrogatory as overly broad and not designed to lead to admissible or discoverable evidence.

17. Organization charts for all of Respondent's businesses relating to this matter, including the name, work address, and telephone number of all employees providing computer support functions within any of the organizations.

RESPONSE: None.

18. All Respondent's employee handbooks and other materials disseminating policies and procedures to individual employees.

RESPONSE: Sample Employee Handbook disseminated to Ladlessoups, LLC employees during its period of operation is enclosed herein.

Ladles Franchising, Inc. has no such documents as it does not operate restaurants or employ service employees, tipped or otherwise. The remaining Respondents do not and have not had any employees.

19. All Respondent's hard copy or electronic calendars for the last five years, up through and including the date of trial.

RESPONSE: Respondents object to this Interrogatory as overly broad and not designed to lead to admissible or discoverable evidence.

20. Lists of all employees since January 1st, 2015, up through and including the date of trial.

RESPONSE: The following employees worked for Ladlessoups, LLC during its time of operation: Avery Jones; Joseph Brennan; Christian Markley; Lindy Clark; Leighann Chicco; Christopher Goodman; Corey Paul; Ireland Pejsa; Sean Powell; Tyrone Satterfield; Taylor Sirles; Morgan Weesner; Shelley Wiley; Matti Elliott; Jenn Evangelist; Madison Botoha; Myah Botoha; Cassidy Melbo; Taylor Raglands; and Phillip Hawkins.

The remaining Respondents do not and have not had any employees. Respondents object to this interrogatory because it seeks information from third parties and information not within their possession, custody, control, or personal knowledge. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.

21. A description of your payroll process, whether you are doing it in-house or whether you are using third-party vendor.

RESPONSE: Ladlessoups, LLC used ADP payroll processing service from 2015 through the end of its operation in September of 2017. ADP sent bi-weekly employee paychecks, quarterly payroll tax returns, and annual tax and payroll summaries to Ladlessoups, LLC.

The remaining Respondents do not and have not had any employees to pay and thus do not use any third-party payroll processing services for that purpose. Respondents object to this interrogatory because it seeks information from third parties and information not within its possession, custody, control, or personal knowledge. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.

22. A copy of Respondent's each and every profit and loss statement, income statement, and balance sheet since January 1, 2015.

RESPONSE: None.

23. Any and all accounting, payroll, banking, or other records relating to salary payments, tips, wages, employment tax records, since January 1, 2015.

RESPONSE: Please find the following documents attached hereto in response to this request: (1) Ladlessoups, LLC 2015 Quickbooks Payroll Summary; (2) Ladles Franchising, Inc.'s 2016 IRS Form 1096 and accompanying Form 1099-Misc.'s; (3) Ladlessoups, LLC 2016 W-2 and Earnings Summaries; (4) Ladles Franchising, Inc.'s 2017 IRS Form 1096 and accompanying Form 1099-Misc.'s; and (5) Ladlessoups, LLC 2017 W-2 and Earnings Summaries.

Respondents Ladlessoups, LLC and Ladles Franchising, Inc. are attempting to locate additional documentation and will produce upon locating the same.

Ladles Franchising, Inc. has never employed service employees, tipped or otherwise.

The remaining Respondents do not and have not had any employees and thus do not possess such records.

24. All W-2s, 1099s, and other employee and/or independent contractor records since Respondent's creation.

RESPONSE: See Response to Request for Production No. 23, above.

Respondents Ladlessoups, LLC and Ladles Franchising, Inc. are attempting to locate the same and will produce upon locating them.

The remaining Respondents do not and have not had any employees and/or independent contractors and thus do not possess such records.

25. A copy of each and every piece of written communication, email, text, fax, letter, or otherwise, arising from or relating to Respondent's policy of retaining credit card tips rather than pay them to employees. As described above, every RFP herein shall be deemed a continuing RFP and Respondent must supplement his answers promptly, if and when he obtains relevant production in addition to, or in any way inconsistent with, his initial production in accordance with the applicable Rules of Civil Procedure.

RESPONSE: None. Respondent Ladlessoups, LLC never possessed a policy of permanently retaining employees credit card tips as all such tips were transferred to the payroll account and paid over to employees.

The remaining Respondents do not and have not had service employees, tipped or otherwise.

Respondents object to this interrogatory because it seeks information from third parties and information not within their possession, custody, control, or personal knowledge. Respondents reserve the right to supplement this and all other responses at any time throughout the discovery process.

26. A copy of each and every complaint or discussion or document described in response to Interrogatory #30-40.

RESPONSE: See Response to Request for Production Nos. 23 and 24, above.

The remaining Respondents do not and have not had service employees, tipped or otherwise, and thus do not possess such documents.

27. A copy of each and every complaint and/or administrative proceeding in which Respondent has been involved.

RESPONSE: Respondents object to this Interrogatory as overly broad and not designed to lead to admissible or discoverable evidence.

Kerry Koon, Attorney for Defendants Ladles Franchising, Inc., Ladlessoups, LLC, Suzie Allen, and Tracy Allen
147 Wappoo Creek Drive, Ste. 203
Charleston, South Carolina 29412
Phone: (843) 795-7000
Fax: (843) 762-5276

LACKE LAW FIRM, LLC

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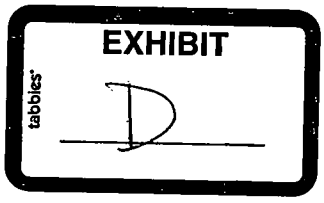
August 21, 2019
Charleston, South Carolina

STATE OF SOUTH CAROLINA,	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2018-CP-10-00785
	)	
CRAIG CHAPPELL, on behalf of himself and	)	
Others similarly situated,	)	
	)	
Plaintiff(s),	)	
v.	)	
	)	*CERTIFICATE OF SERVICE*
Ladles Soup-James Island LLC; Ladlessoups,	)	
LLC; Ladles Soup At Cane Bay, LLC; Ladles	)	
Soups at Citadel Mall LLP; Ladles Soups	)	
Calhoun LLC; Ladles Soups Cane Bay LLC;	)	
Ladles Soups Coosaw LLC; Ladles Soups	)	
Downtown Charleston, LLC; Ladlessoups	)	
Fresh Fields LLC; Ladles Soups @ Freshfields	)	
Village, LLC; Ladlessoups Mainstreet, LLC;	)	
Ladles Soups Moncks Corner LLC; Ladles	)	
Franchise Development, LLC; Ladles Franchising,	)	
Inc.; Ladles Fort Mill, LLC; Ladles Knightsville	)	
LLC; Ladles West Ashley; Teri Owens; Sue Allen,	)	
Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke	)	
Stan Sutton, Carol Sutton, Jack Dalter, Kellie	)	
Henderson; Jane Doe 1-25 (Unknown Operating	)	
Company and Management Company Owners);	)	
John Doe 25-40 (Management Personnel).	)	
	)	
Defendants.	)	
	)	

I, Megan Mitchum, an employee of Kerry W. Koon, Esq., hereby certify that on August 21, 2019, I served a copy of Defendants Ladles Franchising Inc., Ladlessoups, LLC, Sue Allen and Tracy Allen's Answers to Plaintiff's First Interrogatories & Responses to First Request for



Production of Documents which are contained on a CD provided herewith, in the above captioned case, by depositing the same in the U.S. Mail, addressed to the following:

Benjamin LeClercq, Esq.
708 S. Shelmore Blvd., Ste. 202
Mt. Pleasant, SC 29464

Peter B. Shelbourne, Esq.
131 E. Richardson Avenue
Summerville, SC 29483

Paul B. Ferrara, III, Esq.
2300 Otranto Road
North Charleston, SC 29406

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

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 DEFENDANT LADLES SOUPS OF MOUNT PLEASANT, LLC, ERIK DYKE, AND JULIE DYKE'S MOTION FOR SUMMARY JUDGMENT**

Plaintiff submits this Memorandum in Opposition to Defendant Ladlessoups Mount Pleasant, LLC, Erik Dyke, and Julie Dyke's ("Defendants" or "Ladles Mt. Pleasant") Motion for Summary Judgment. Defendants' Motion for Summary Judgment should be denied.

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FACTUAL BACKGROUND

The Ladles Soups restaurant concept was created by Defendants Suzie Allen and Tracy Allen with the first location opening in West Ashley in 2007, the second location opening on Kiawah Island in 2008, and the third location opening in Summerville in 2009. 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 and downtown Charleston, respectively. Additionally, Defendant 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. Mr. Paul eventually purchased the West Ashely location from Suzie Allen in 2017.

This lawsuit is brought by a former employee of Ladles Soups James Island, LLC, 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.

The existence of the policy not to pay employees their credit card tips came to light when on May 6, 2016, Plaintiff Chappell discovered a handwritten ledger kept at the James Island restaurant and subsequently learned that such policy is a Ladles "group-wide" policy. The very

[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.

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

next day Plaintiff Chappell confronted his manager, Teri Owens who is also an owner of the restaurant, telling her he thought it was wrong for an employer to retain credit card tips. Plaintiff Chappell was immediately terminated when he complained about the Defendants' retention of employee tips.

On May 24, 2019, Plaintiff served his first sets of Interrogatories and Requests for Production on all Defendants. Defendant Ladles Mt. Pleasant provided incomplete answers to Plaintiff's discovery requests by responding with an objection to Interrogatory No. 26, which requested the names of current and past employees. *See,* Ladles Mt. Pleasant's Responses to Plaintiff's First Set of Interrogatories at No. 26 **(attached hereto as Exhibit A).** Defendant also objected to Plaintiff's request for documents relating to accounting, payroll, banking, or other records relating to salary payments, tips, wages, employment tax records since January 1, 2015, on the basis that the information being requested was "irrelevant nor calculated to lead to admissible evidence." *See*, Ladles Mt. Pleasant's Responses to Plaintiff's First Requests for Production at No. 23 **(attached hereto as Exhibit B).** Defendant provided unresponsive or incomplete and blacked out federal and state tax returns, income statements, balance sheets, and profit/loss statements in response to Plaintiff's Requests for Production Nos.12 and 22. *See, Id.* at Nos. 12 and 22. Plaintiff's discovery requests are in part designed to uncover information directly relevant to determining whether Defendants continue to engage in actions that violate the rights of their employees under the SCPWA. Plaintiff's Motion to Compel complete discovery responses from Defendant is one of several motions in this matter currently pending with this Court.

PROCEDURAL BACKGROUND

On February 14, 2018, Plaintiff commenced this action by Summons and Complaint which asserted a number of claims against the Ladles Defendants including failure to pay wages under

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

the South Carolina Payment of Wages Act, breach of contract, and conversion. 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. On or about June 20, 2018, Defendants Ladles Soups Mt. Pleasant, Erik Dyke, and Julie Dyke filed Answers to the Complaint. Next, an additional sixteen Defendants filed Answers on or about July 18, 2018. Finally, four additional Defendants filed Answers on or about August 1, 2018.

Subsequent to Answers being filed by Defendants, a number of motions were filed. On July 24 and 28, 2018, 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. Next, a hearing on Defendants' motions was held and all three motions were denied by Orders of this Court dated January 29, 2019. On February 14, 2019, a Motion to Reconsider the January 29, 2019 Order denying the Motion to Dismiss filed on behalf of sixteen Defendants and denied by an Order of this Court dated March 6, 2019. 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.

Plaintiff has submitted a proposed scheduling order with a trial date not before April 13, 2020, and a status conference in this matter has recently been scheduled to take place on November 7, 2019.

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

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, SCRCP. 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), SCRCP. 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

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

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. Defendant's Motion for Summary Judgment is Premature Because Plaintiff's Motion for Class Certification is Still Pending.

Defendant's Motion for Summary Judgment relies on arguments that Plaintiff was not in a contractual relationship with Mt. Pleasant Ladles and that Mt. Pleasant Ladles has never taken anything from Plaintiff. *See* Defendant's Motion for Summary Judgment at p. 2. However, the Complaint alleges class action allegations for failure to pay wages under the SCPWA, breach of contract, and conversion against all Defendants and Plaintiff's Motion for Class Certification is still pending with this Court. The class Plaintiff has requested this Court certify in its motion is defined as follows:

> All employees who worked for Defendants in Ladles restaurant locations, and were paid an hourly wage without credit card tips, during the three (3) years prior to the filing of this lawsuit.

See, Plaintiff's Motion for Class Certification **(attached hereto as Exhibit C).** The overall basis for Plaintiff's Motion for Class Certification is that the putative Plaintiffs' claims raise common questions and arise from a common nucleus of facts given that there appears to be a policy in place amongst the Defendant Ladles locations where the owners keep the credit card tips that the employees are entitled to.

Although Defendant Ladles Mt. Pleasant does not dispute in its motion that tips are wages under SCPWA, it may be helpful to discuss the meaning of the statutory language, nonetheless. 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).

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

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. Funds placed in pension plans or profit sharing plans are not wages subject to this chapter.

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

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.* 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.*

Furthermore, a cause of action under SCPWA is separate and distinct from federal Fair Labor Standards Act claims. The SCPWA statute is broader than the FLSA in that it is not limited to controversies involving minimum wage and overtime but applies to all wages due. *See, Spallone v. SoHo Univ., Inc.,* No. 4:15-cv-1622-RBH (D. S.C., 2015).

To date, depositions of four Defendant locations have been taken and testimony from at least three of the Defendant locations already confirms without a doubt that a policy of not paying employees their credit card tips is a widespread practice 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 Mill[2] at p 32, Lns. 1-16; p. 37, Lns. 3-5 **(attached hereto as Exhibits D and E)**. Moreover, Franchisor Defendant Suzie Allen also testified that while she owned the Ladles Soup locations at West Ashley, Kiawah Island, and Summerville, she

[2] Corey Paul owns Ladles West Ashley as well as Ladles Fort Mill.

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

only paid employees their hourly wages and that the credit card tips subsidized their wages. *See* Deposition excerpts of Suzie Allen, Ladlessoups, LLC, and Ladles Franchising, Inc. at p. 21, Lns. 6-25 and p. 22 at Lns. 1-2 **(attached hereto as Exhibit F).**

Accordingly, Ladles Mt. Pleasant's argument that Plaintiff was not in a contractual relationship with Ladles Mt. Pleasant and that Ladles Mt. Pleasant has never taken anything from Plaintiff is misplaced here due to the nature of class action lawsuits and its Motion for Summary Judgment on this basis while Plaintiff's Motion for Class Certification is still pending is premature and, therefore, should be denied.

II. Defendant's Motion for Summary Judgment is Premature and Should be Denied Because Defendant has Not Fully Responded to Plaintiff's Discovery Requests.

Defendant Ladles Mt. Pleasant has not responded fully to discovery in this case and there is no evidence in the record other than Defendant's own denial to support its contention that it pays its employees their credit card tips. Specifically, Defendant has objected to providing to Plaintiff names and contact information for current and previous employees to allow counsel for Plaintiff an opportunity to conduct their own investigation of the facts. These employees are witnesses to the facts of the case and Defendant is required to comply with Rules 33 and 34 of the South Carolina Rules of Civil Procedure. Here, it is particularly important that Plaintiff have the opportunity to conduct his own investigation because management for at least one Ladles restaurant location has instructed its employees to be deceptive to customers who inquire about who gets paid credit card tips. *See,* Affidavit of Lani Charpia **(attached hereto as Exhibit G).**

Additionally, in its Responses to Plaintiff's Request for Production Nos. 12 and 22 that seek information regarding federal and state tax returns, income statements, balance sheets, and profit/loss statements, Defendant produced federal and state tax returns which presumably are intended to show that it does not withhold credit card tips from its employees. However, these

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

documents merely contain what appears to be Defendant's own handwritten notes indicating various sums of money without any explanation of how it was calculated, who it was intended to be paid to, or whether or not it was actually paid to anyone at all. These documents are particularly confusing and ambiguous in light of the testimony of Defendant Suzie Allen, who Ladles Mt. Pleasant owner Julie Dyke trained under and learned the business from in preparation for purchasing her own Ladles franchise. Defendant Allen testified that she believed that she was actually paying her employees their credit card tips in the form of higher hourly wages despite the fact that her employees never received any credit card tips. *See* Exhibit F. Considering the extent of Defendant Dyke's experience of working with and learning the Ladles business under Defendant Allen, there still remains a question of fact as to what Ladles Mt. Pleasant means in its denial of withholding credit tips from employees and whether Ladles Mt. Pleasant is actually paying employees their credit card tips in addition to their hourly wage. Moreover, Defendant has failed to provide any reasonable basis for objecting to producing documents relating to accounting, payroll, banking, or other records relating to salary payments, tips, and wages as requested in Plaintiff's Request for Production No. 23. Its objection that these documents are "irrelevant nor calculated to lead to admissible evidence" is not tenable and Defendant's Motion for Summary Judgment should be denied. Exhibit B at No. 23.

III. Plaintiff's Testimony Regarding Ladles Mt. Pleasant's Tipping Policy Leaves an Issue of Triable Fact for the Jury.

Finally, Defendant argues that Plaintiff testified conclusively that Ladles Mt. Pleasant was the only Ladles location that handled charged tips properly. That is simply not the case because Plaintiff's testimony was speculative and he merely testified as to what he heard from a third-party, Logan Simmons, who has never worked at Ladles Mt. Pleasant and has no first-hand knowledge of its policy for paying employees charged tips. Plaintiff testified that:

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

> I was told, and it's hearsay, by my employee, Logan, that the only person or company that allowed the employees to collect all tips including charge was Mount Pleasant. And I wanted to exclude them if there was truth to that. But he told me – my knowledge was he told me that was the franchise of the company policy, that that's what all the restaurants did except Mount Pleasant.

Deposition excerpt of Craig Chappell at p. 21, Lns. 20-25 and at p. 22, Lns. 1-2 **(attached hereto as Exhibit H).**

Moreover, the speculative third-party information provided to Plaintiff appears to be based on the mistaken belief that the Town of Mt. Pleasant has its own ordinance requiring employers to pay its employees credit card tips:

> And like I said, it was told by Logan, again, that they're the only ones that were allowed to get charge tips, for some city ordinance. That came from Logan, so I know it's hearsay.

Id. at p. 45, Lns. 8-11. The Town of Mt. Pleasant does not appear to have any such ordinance or regulation.

Plaintiff's testimony regarding Ladles Mt. Pleasant's policy for paying employees charged tips based on what he was told by a third-party who has never worked at Ladles Mt. Pleasant is purely speculative and far from dispositive. Accordingly, Defendant's Motion for Summary Judgment should be denied.

Respectfully submitted,

s/ David D. Ashley_____
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Counsel for Plaintiffs

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

October 23, 2019
Mt. Pleasant, South Carolina

CERTIFICATE OF SERVICE

I, Debbie Mathews, certify that on October 23, 2019, a true and correct copy of the foregoing **PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT LADLES SOUPS OF MOUNT PLEASANT, LLC, ERIK DYKE, AND JULIE DYKE'S MOTION FOR SUMMARY JUDGMENT** was served upon counsel for Defendants, via electronic mail as follows:

Kerry Koon - kerrykoon@hotmail.com
M. Evan Lacke - elacke@lackelawfirm.com
147 Wappoo Creek Drive, Suite 204
Charleston, SC 29412

Paul B. Ferrera, III - paul@ferraralawfirm.net
Janel Ferrara - janel@ferraralawfirm.net
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2300 Otranto Road
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P. Brandt Shelbourne – brandt@shelbournelaw.com
Yvonne Franklin - civlit@shelbournelaw.com
131 E. Richardson Avenue
Summerville, SC 29483

s/ Debbie Mathews
Debbie Mathews

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-10-00785

CRAIG CHAPPELL, on behalf of himself and others similarly situated,

Plaintiff(s),

v.

Ladles Soups – James Island LLC; Ladles Soups, LLC; Ladles Soups At Cane Bay LLC; Ladles Soups At Citadel Mall LLP; Ladles Soups Calhoun LLC; Ladles Soups Cane Bay LLC; Ladles Soups Coosaw LLC; Ladles Soups Downtown Charleston, LLC; Ladles Soups Fresh Fields, LLC; Ladles Soups @ Freshfields Village, LLC; Ladles Soups Mainstreet, LLC; Ladles Soups Moncks Corner LLC; Ladles Soups Mount Pleasant, LLC; Ladles Franchise Development, LLC; Ladles Franchising Inc.; Ladles Fort Mill, LLC; Ladles Knightsville LLC; Ladles West Ashley; Teri Owens; Sue Allen, Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke, Stan Sutton, Carol Sutton, Jason Dalter, Kellie Henderson; Jane Doe 1-25 (Unknown Operating Company and Management Company Owners); John Doe 25-40 (Management Personnel)

Defendants.

LADLES SOUPS OF MOUNT PLEASANT, LLC, ERIK DYKE AND JULIE DYKE RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

Exhibit A

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

TO: CRAIG CHAPPELL AND HIS ATTORNEY BENJAMIN LE CLERCQ, ESQ.:

Defendants, Ladles Soups Mount Pleasant LLC, Erik Dyke and Julie Dyke, (hereinafter referred to as "Defendants") by and through their undersigned counsel, respond to Plaintiff, Craig Chappell's First Set of Interrogatories as follows:

INTERROGATORIES

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

Response:

Erik Dyke
c/o Shelbourne Law
131 E. Richardson Ave
Summerville, SC 29483

Mr. Dyke is the owner and franchisee of Ladles Soups Mount Pleasant in the above captioned action and is expected to testify regarding his knowledge of the facts and circumstances in the pleadings. Upon information and belief, Mr. Dyke has not made any written or recorded statements regarding this matter beyond those found in its pleadings, discovery responses or documents in this matter.

Julie Dyke
c/o Shelbourne Law
131 E. Richardson Ave
Summerville, SC 29483

Mrs. Dyke is a co-owner and franchisee of Ladles Soups Mount Pleasant in the above captioned action and is expected to testify regarding her knowledge of the facts and circumstances in the pleadings. Upon information and belief, Mrs. Dyke has not made any written or recorded statements regarding this matter beyond those found in its pleadings, discovery responses or documents in this matter

2. Does Respondent have liability insurance, or is there any other form of indemnity or bond, through which Respondent is or might be insured in any manner for the damages, claims,

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

or actions that are the subject of the pleadings? If so, please provide the following information for each policy:

a. The kind of insurance, indemnity or bond;

b. The name of the company or companies, including any excess or umbrella carriers, which you claim provide coverage;

c. The policy number or policies numbers of any applicable policy;

d. The limit or limits of liability of each policy.

e. The named insured of each policy.

f. Whether the insurance carrier has accepted or denied coverage.

g. Whether you are being defended by the insurance carrier under a reservation or rights.

Response: **Defendant does not have any applicable insurance.**

3. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

Response: **In response to Interrogatory number 3, Defendants adopt and reiterate their response to Interrogatory number 1.**

4. Identify each and every person who aided in answering these Interrogatories or the request for production of documents issued here with.

Response: **Defendants Erik Dyke and Julie Dyke.**

5. State all facts upon which you rely in support of each and every defense to Plaintiffs' Complaint in this matter.

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

Response: **Plaintiff alleged that that Defendants failed to pay him wages and failed to turn over tips paid on credit card charges. Plaintiff has not had a contractual relationship with Defendants nor has Plaintiff ever been employed by the Defendant's. Plaintiff admitted in his deposition that Defendants did not take anything from him. Further, Defendants have never withheld credit card tips from employees.**

6. State the factual basis as you understand it to each factual allegation in Plaintiff's Complaint in this matter.

Response: **Defendants do not know of any factual basis for Plaintiff's causes of action.**

7. Set forth a list of photographs, plats, sketches, or other prepared documents in your possession that relate to a claim or defense in this case.

Response: **Defendants have attached all documents in their possession at this time. Defendants reserve the right to supplement their answers to Plaintiff's Interrogatories as more information is obtained through the discovery process.**

8. In connection with each expert witness whom Respondent proposes to use as a witness at the trial of this case, please list the following:

a. the expert's name, address, in field of expertise;

b. detailed summary of the expert's opinions regarding this case and the basis for them;

c. summary of the expert's knowledge, skill, experience, training, or education as it applies to the specific field of expertise alleged in this case;

d. description of the claims and lawsuits in which the expert has given opinions, including the names and addresses of the parties and their attorneys, and the location of any depositions and recorded statements the expert has given in cases other than this one;

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

e. the percentage of expert's practice devoted to consulting work in legal claims, the percentage attributable to the claimant/plaintiff as opposed to the defendant, and the amount of income derived from such consulting in the last 2 years;

f. the specifics of any publication in speaking engagements given by the expert on matters relating to the expert's profession; and

g. the names of publications considered by the expert to be learned treatises as described in the Federal or South Carolina rule of evidence 803(18).

Response: **Defendants have not obtained an expert witness at this time but reserve the right to supplement their answers to Plaintiff's Interrogatories as more information is obtained through the discovery process. Defendants will reply on any expert retained by the other Defendants or Plaintiff in this case and all written responses to the discovery listing them as experts.**

9. If Respondent or any other party with whom Respondent is familiar is improperly identified, give the proper identification and state whether counsel will accept service of an amended summons and/or pleading reflecting the correct information.

Response: **Defendants are not aware of any party improperly identified, other than Defendants should not be named in this suit.**

10. If Respondent is a legal entity, describe the type of entity, list all members and/or shareholders, directors, officers, and describe its constitutive documents. Describe which specific individuals at Respondent worked on or participated in the issues and facts described in this action? Give their names, contact details, and email addresses.

Response: **Defendants are the sole owners and members of Ladles Soups Mount Pleasant. Ladles is an independent LLC owned by the Defendants. Defendants purchased a franchise from co-Defendant Ladles Franchising Inc. which has no control or oversight into Defendants' business. Defendants have not worked on or participated in the issues and facts described in this matter.**

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

11. If Respondent is not a legal entity, give the names and contact details for all individuals with whom Respondent worked or with whom Respondent was affiliated arising from or related to this matter.

Response: **Not applicable.**

12. Describe and give the current location of all electronic equipment, including computers, handheld devices, mobile telephones, pagers, and/or PDAs that each person identified in the previous two Interrogatories has used. For each device, specify which people used it and for which subpart from the previous Interrogatory each person used it.

Response: **Defendants object to this Interrogatory as it seeks information not relevant to the subject matter of this lawsuit or not calculated to lead to admissible evidence.**

13. What does Respondent allege are the most important communications and meetings in this matter?

Response: **Defendants object to this Interrogatory as it seeks information subject to Attorney-Client privilege and calls for legal conclusions. Without waiving these objections, Defendants are unaware of any communications or meetings.**

14. Does Respondent contend there is an oral contract? If so, please state what Respondent believes to be the terms and provisions of all such oral contract(s) in detail and state the name, address and contact information of all persons you believe have knowledge or information relating to the terms or provisions of the oral contract(s).

Response: **Defendants had no written or oral contract with the Plaintiff as Plaintiff was never an employee of Defendants.**

15. Identify any and all social media sites of which Respondent is/was a member or in which Respondent participated/subscribed from January 1st, 2015 to the day of trial. Please state whether you have a Facebook, LinkedIn, Twitter, or other social media page or site, and if so, please provide the login information and password necessary to access such site or page.

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

Response: **Defendants object to the production of this information as it is irrelevant, nor calculated to lead to admissible evidence. Without waiving these objections, www.facebook.com/Ladles-Soups-Mount Pleasant and on Twitter – Follow@Ladles Soups.**

16. List and describe each and every document, drawing, map, diagram, model or other documentary material or tangible object that you intend to rely on to support your allegations/ defenses in this action, regardless of whether you intend to offer the same into evidence or merely use as a demonstrative aid at the trial of this action.

Response: **Defendants have attached all documents in their possession at this time. Defendants reserve the right to supplement their answers to Plaintiff's Interrogatories as more information is obtained through the discovery process.**

17. State whether you have been a party to a civil lawsuit. If so, for each lawsuit, please provide the following information:

a. How were you named in the lawsuit (e.g. plaintiff, defendant, intervenor, etc.)?

b. What was the nature of each claim and defense?

c. The date, location, and title of the court in which the action was commenced.

d. The names of all the parties other than yourself involved in the action.

Response: **Defendant, LLC has not been a party to a lawsuit.**

18. Please identify and describe every charge, administrative proceeding, arbitration and/or other legal proceeding brought against Respondent, and please identify the person making said allegations.

Response: **None.**

19. State your gross income for the years January 1, 2014 through the current date. Do you regularly produce profit and loss statements, balance sheets and income statements?

Response: **Defendants object on the grounds that this Interrogatory is irrelevant, nor calls for discovery of admissible evidence. Without waiving objections, Defendants have attached all documents in their possession at this time. Defendants reserve the right to supplement their answers to Plaintiff's Interrogatories as more information is obtained**

through the discovery process. Defendants do not regularly produce profit and loss statements, balance sheets and income statements.

20. State the name and contact details of your tax preparer, accountant, and bookkeeper.

Response: **Defendants have attached all documents in their possession at this time. Defendants reserve the right to supplement their answers to Plaintiff's Interrogatories as more information is obtained through the discovery process.**

21. For each defendant that is a limited liability company, please state:

a. The name listed in the current articles of organization;

b. All of the names used by the company during the past 10 years and the dates each was used;

c. The name and address of each member;

d. The name and address of each manager;

e. The date and place of formation;

f. The address of the principal place of business; and

g. The states in which it is registered to do business.

Response: **Ladles Soups Mount Pleasant, LLC**
Members - Erik Dyke and Julie Dyke, c/o Shelbourne Law, 131 E. Richardson Ave., Summerville, SC 29483
Incorporated in May 3, 2010 in South Carolina

22. Set forth for each and every Defendant, individually, any and all real and personal property owned, whether individually, collectively, or otherwise owned including with other third parties, including but not limited to the following:

a. all financial accounts, including bank, checking, savings, money market, investment, and/or securities accounts currently held by or for your benefit, and state current balances, location of the accounts, and name on accounts;

b. any and all certificates of deposit, stock certificates in any publicly held or closely held corporation, as well as any bonds owned by each and every

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

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

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

j. any and all tax receipts, tax returns or supplemental forms, and any and all other documents, forms or letters filed with United States Internal Revenue Service, and any other state tax authority within the last 5 years.

Response: **Defendants object to this Interrogatory on the grounds that it is compound, unreasonable, overly broad, unduly burdensome and expensive, irrelevant and not reasonably calculated to lead to discoverable evidence.**

23. State the name and location of each and every Ladles' franchisee and name the owners of that franchise.

Response: **Defendants do not know the name and location of every franchise.**

24. What is the bank and account number for the account used to pay employees?

Response: **Defendants object to this Interrogatory as it calls for production of irrelevant information or is not conducive to lead to the discovery of admissible evidence.**

25. Do you use a third-party payroll processing service? Describe all documents received from them since January 1, 2015.

Response: **Defendants object to this Interrogatory on the grounds that it is irrelevant and unduly burdensome.**

26. State the name, telephone number, including mobile phone number, email address, and street address for every employee of Respondent since January 1, 2015, and list whether they still work with Respondent, and if not, why they left.

Response: **Defendants object to this Interrogatory on the grounds that it seeks information not relevant to the subject matter of this lawsuit nor conducive to lead to admissible evidence. This request is also an invasion of individuals right to privacy as they are not parties to this matter. Plaintiff has not obtained class certification.**

27. How did Respondent come to be a Ladles Franchisee? Name and describe the Franchisor of Ladles ("Franchisor"), and describe Respondent's relationship with any such Franchisor, and the nature of the documents establishing such franchise relationship. Describe all communications, written or oral with such franchisor since January 1, 2015.

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

Response: **Defendants purchased a franchise and are governed by the Franchise Agreement between the Franchisor and Franchisee.**

28. Since January 1, 2015, state each and every employee, member, and/or officer of Respondent that has had any responsibility for: i) payroll; ii) signing or disbursing paychecks and/or wages; iii) handling tips/tip policy; iv) accounting and credit card receipts; v) bookkeeping/accounting; vi) hiring and firing employees.

Response: **Defendants Erik Dyke and Julie Dyke.**

29. Does Respondent have an employee handbook?

Response: **Defendants object to this Interrogatory as it is vague and unduly burdensome as there is no specified time period requested. Without waiving these objections, Defendants have attached all documents in their possession at this time. Defendants reserve the right to supplement their answers to Plaintiff's Interrogatories as more information is obtained through the discovery process.**

30. Since January 1, 2015, describe all payroll and salary documents provided to employees and or independent contractors, including W-2s and 1099s.

Response: **Defendants object to this Interrogatory as it is unclear as to what the Plaintiff is seeking.**

31. Who decided on behalf of Respondent that Respondent would retain credit card tips rather than pay them to employees? Did any other Defendant, or employee/agent/officer of another Defendant, share in the responsibility for that decision, agree with or suggest, counsel, or otherwise state that Respondents should retain credit card tips rather than pay them to employees?

Response: **Defendants object to this Interrogatory on the grounds that it assumes that Defendants retain credit card tips and does not provide credit card tips to its employees. Without waiving these objections, Defendants do not have a policy of retaining credit card tips from employees.**

32. When and how did Respondent decide that the credit card tip policy described in the prior paragraph would be Respondent's policy?

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

Response: **This has always been Defendants' policy to give credit card tips to the employees.**

33. Describe each and every written and oral communication with any person, including employees, officers, agents, or individuals affiliated with other franchisees or franchisor, or otherwise arising from or related to Respondent's policy of retaining credit card tips. In particular, describe any and all emails relating to such policy.

Response: **Defendants object to this Interrogatory on the grounds that it assumes that Defendants retain credit card tips and does not provide credit card tips to its employees. Without waiving these objections, Defendants do not have a policy of retaining credit card tips from employees.**

34. Describe any and all meetings with any other franchisees, their agents, members, officers or employees, and/or with Franchisor its agents, members, officers or employees, discussing or describing Respondent or other Franchisee or Franchisor policy relating to tips.

Response: **Defendants have not had any meetings.**

35. What has been Respondent's policy as to cash tips since January 1, 2015? Has that policy ever changed?

Response: **Defendants pay cash tips to employees.**

36. Who fired Craig Chappell? Why was he fired?

Response: **Defendants did not fire Craig Chappell as Craig Chappell was never employed by the Defendants.**

37. Describe Respondent's accounting software.

Response: **Defendants object to this Interrogatory on the grounds that it is overly broad and unduly burdensome and not calculated to lead to the discovery of admissible evidence.**

38. Describe Respondent's management structure for employee operations. Describe the types of employees and their functions in Respondent's operations.

Response: **Defendants Erik Dyke and Julie Dyke handle all of this.**

39. Describe any and all written communications were notices with Respondent's customers and clients notifying them as to any tip policy of Respondent, and in particular, Respondent's policy of retaining credit card tips rather than paying them to employees.

Response: **Defendants object to this Interrogatory on the grounds that it assumes facts not in evidence. Without waiving these objections, Defendants do not have a policy of retaining credit card tips as Defendants does not retain credit card tips from employees.**

40. Have any employees complained or raised concerns about Respondent's tipping policies? Describe each and every such complaint or discussion, and whether the same is documented in any written communications.

Response: **No employees have complained.**

RESPECTFULLY SUBMITTED,

By: _____

P. Brandt Shelbourne, Esquire (SCB 15143)
SHELBOURNE LAW FIRM
131 E. Richardson Avenue
Summerville, SC 29483
(843) 871-2210
ATTORNEYS FOR DEFENDANTS LADLES SOUPS OF MOUNT PLEASANT, LLC, ERIK DYKE AND JULIE DYKE

June 21, 2019
Summerville, South Carolina

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

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CERTIFICATE OF SERVICE

I, the undersigned, an employee of Shelbourne Law, do hereby certify that a true and correct copy of Defendants Ladles Soups of Mount Pleasant, LLC, Erik Dyke and Julie Dyke Responses to Plaintiff's First Set of Interrogatories which this certificate is affixed was served upon the following parties via hard copy and/or electronic mail to the following:

Ben LeClercq, Esq. LeClerq Law Firm 708 South Shelmore Blvd., Ste.202 Mount Pleasant, SC, 29406 *Attorney for Plaintiff*	Kerry Koon, Esq. 147 Wappoo Creek Dr. Wappoo Centre, Suite 203 Charleston, SC 29491 kerrykoon@hotmail.com *Attorney for Defendants, Ladles Franchising, Inc.; Ladessoups, LLC, and Tracy Allen*
Paul B. Ferrara, III, Esq. Ferrara Law 8887 Old University Blvd. 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*	

Date: June 25, 2019

Yvonne Franklin, Paralegal at Shelbourne Law

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

CRAIG CHAPPELL, on behalf of himself and others similarly situated,

Plaintiff(s),

v.

Ladles Soups – James Island LLC; Ladles Soups, LLC; Ladles Soups At Cane Bay LLC; Ladles Soups At Citadel Mall LLP; Ladles Soups Calhoun LLC; Ladles Soups Cane Bay LLC; Ladles Soups Coosaw LLC; Ladles Soups Downtown Charleston, LLC; Ladles Soups Fresh Fields, LLC; Ladles Soups @ Freshfields Village, LLC; Ladles Soups Mainstreet, LLC; Ladles Soups Moncks Corner LLC; Ladles Soups Mount Pleasant, LLC; Ladles Franchise Development, LLC; Ladles Franchising Inc.; Ladles Fort Mill, LLC; Ladles Knightsville LLC; Ladles West Ashley; Teri Owens; Sue Allen, Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke, Stan Sutton, Carol Sutton, Jason Dalter, Kellie Henderson; Jane Doe 1-25 (Unknown Operating Company and Management Company Owners); John Doe 25-40 (Management Personnel)

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-10-785

LADLES SOUPS OF MOUNT PLEASANT, LLC, ERIK DYKE AND JULIE DYKE RESPONSES TO PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

TO: CRAIG CHAPPELL AND HIS ATTORNEY BENJAMIN LE CLERCQ, ESQ.:

Defendants, Ladles Soups Mount Pleasant LLC, Erik Dyke and Julie Dyke, (hereinafter referred to as "Defendants") by and through their undersigned counsel, respond to Plaintiff, Craig Chappell's First Requests for Production as follows:

REQUESTS FOR PRODUCTION

1. All documents identified, described, referenced, or referred to in your responses to our First Interrogatories or to our First Requests for Production.

Response: Defendants will produce copies of all documents responsive to this request to produce in their possession at this time.

2. Any and all written communications, correspondence, memoranda, documents, and things relating to, supporting, refuting, or involving any of the facts and claims alleged in Plaintiff's Complaint and/or any answer by a Defendant.

Response: Defendants will produce copies of all documents responsive to this request to produce in their possession at this time.

3. Any and all written communications and/or documents relating to or involving the Plaintiff and/or any Defendant.

Response: Defendants will produce copies of all documents responsive to this request to produce in their possession at this time.

4. All statements given by respondent or any witness identified by Respondent or other witness to the facts relevant to this case that are in the possession of Respondent or his counsel, whether written or recorded, that relate in any way to the allegations of the complaint in this matter, or an answer by any Defendant.

Response: None at this time. Furthermore, Defendants have attached all documents in their possession at this time and reserves the right to supplement through the discovery process.

5. Any and all written communications, documents, and things relating to,

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

supporting, refuting, or involving any of the averments and defenses set forth in any pleading you have submitted in this matter.

Response: Defendants will produce copies of all documents responsive to this request to produce in their possession at this time.

6. Copies of all documents produced by third parties pursuant to subpoenas issued in this case or any request made pursuant to the Freedom of Information Act or other request by Respondent or Respondent's counsel.

Response: None at this time. Defendants reserve the right to supplement through the discovery process.

7. Any and all documents identified in response to Interrogatory number 8, relating to expert witnesses.

Response: Defendants have not obtained an expert witness at this time. However, Defendants reserve the right to supplement their answer to Plaintiff's Request to Produce as more information is obtained through the discovery process.

8. All e-mails, faxes, letters, text messages and other written communication between each and every Defendant and each and every Plaintiff.

Response: Defendants do not have any e-mails, faxes, letters, text messages and other written communication with the Plaintiff as Plaintiff was not an employee of the Defendants. Defendants are unaware of specific e-mails, faxes, letters, text messages and other written communication with Defendants, however, Defendants will produce copies of all documents responsive to this request to produce in their possession at this time.

9. If Respondent is a legal entity, produce all internal communications relating to this matter, including without limitation all e-mails, faxes, letters, text messages and other written communications between and among Respondent's employees, officers, directors, agents and counsel.

Response: Defendants object on the grounds that this calls for production of information protected by the Attorney-Client Privilege and by Attorney Work Product doctrine.

10. Provide for inspection all computers, electronic devices, and telephones containing

relevant production, ESI, or electronic data, including those described in response to Interrogatory number 12.

Response: **Objection. This Request for Production is overly broad, unduly burdensome, or not reasonably calculated to lead to discovery of admissible evidence.**

11. Produce a complete, itemized accounting and financial summary of all amounts paid and/or owed to you by any other party to this action for the period January 1, 2015 to present.

Response: **Objection. Defendants do not owe, nor have paid any other party other than franchise fees which are not relevant or calculated to lead to discovery of admissible evidence.**

12. All federal and state tax returns, income statements, balance sheets, and profit/loss statements for Respondent during the last five years, up through and including the date of trial.

Response: **Objection. This Request for Production is overly broad, unduly burdensome. Without waiving these objections, Defendants will produce the federal and state tax returns for the last five years for Ladles Soups of Mount Pleasant, LLC.**

13. All Respondent's bank statements from the last five years, up through and including the date of trial.

Response: **Objection. This Interrogatory calls for production of irrelevant information and information not calculated to lead to discovery of admissible evidence.**

14. For any individual Respondent, produce any resume or curriculum vitae you have created or used from the last five years, up to and including the date of trial.

Response: **None.**

15. Any and all documents evidencing or relating to postings, blogs, whether statements on any Internet were social media site in which you discuss any matter or issue arising from or relating to this action.

Response: **None.**

16. Produce each and every post, note, mention, story, document, or other item made by Respondent during the last seven years, up through and including the date of trial, on any and

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

all membership–based Internet websites which relates to or in any way references any party or witness to this action, or any issue or claim in this matter, and/or the allegations set forth in the complaint or any answer filed in this matter. For purposes of this RFP, "membership–based Internet websites" shall include social media websites (including but not limited to Myspace, Flickr, YouTube, Facebook, classmates, Bebo, Deviant Art, LinkedIn, Meetup, Gather, My Yearbook, Friendster, Google Plus, or Web Shots), blogging websites (including but not limited to Blogger, Live Journal, twitter, Windows Live Spaces, WordPress, Blogspot, Vox, or Xanga), dating websites (including but not limited to Adult Friend Finder, Ok Cupid, eHarmony, match, or Fubar), and any other personal websites for which Respondent has created, used, or maintained a personal account, username, or profile at any time for the last seven years up to the present.

Response: **None.**

17. Organization charts for all of Respondent's businesses relating to this matter, including the name, work address, and telephone number of all employees providing computer support functions within any of the organizations.

Response: **Defendants do not have an organization chart for its business.**

18. All Respondent's employee handbooks and other materials disseminating policies and procedures to individual employees.

Response: **Defendants will produce copies of all documents responsive to this request to produce in their possession at this time, but do not have a handbook.**

19. All Respondent's hard copy or electronic calendars for the last five years, up through and including the date of trial.

Response: **Defendants object on the grounds that it is irrelevant nor calculated to lead to admissible evidence.**

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

20. Lists of all employees since January 1st, 2015, up through and including the date of trial.

Response: **Defendants object on the grounds that it is irrelevant nor calculated to lead to admissible evidence.**

21. A description of your payroll process, whether you are doing it in-house or whether you are using third-party vendor.

Response: **In house.**

22. A copy of Respondent's each and every profit and loss statement, income statement, and balance sheet since January 1, 2015.

Response: **Defendants will produce copies of all documents responsive to this request to produce in their possession at this time.**

23. Any and all accounting, payroll, banking, or other records relating to salary payments, tips, wages, employment tax records, since January 1, 2015.

Response: **Defendants object on the grounds that it is irrelevant nor calculated to lead to admissible evidence.**

24. All W-2s, 1099s, and other employee and/or independent contractor records since Respondent's creation.

Response: **Objection. This Request for Production is an invasion of an employee and/or independent contractor's privacy who are not a party to this action. In addition, this request is unduly burdensome, expensive and not reasonably calculated to lead to discovery of admissible evidence.**

25. A copy of each and every piece of written communication, email, text, fax, letter, or otherwise, arising from or relating to Respondent's policy of retaining credit card tips rather than pay them to employees. As described above, every RFP herein shall be deemed a continuing RFP and Respondent must supplement his answers promptly, if and when he obtains relevant

production in addition to, or in any way inconsistent with, his initial production in accordance with the applicable Rules of Civil Procedure.

Response: **Defendants do not have a policy of retaining tips so there are no such documents.**

26. A copy of each and every complaint or discussion or document described in response to Interrogatory #30-40.

Response: **Defendants object as this request calls for production of irrelevant information or is not calculated to lead to discovery of admissible evidence.**

27. A copy of each and every complaint and/or administrative proceeding in which Respondent has been involved.

Response: **None.**

RESPECTFULLY SUBMITTED,

By: _____

P. Brandt Shelbourne, Esquire (SCB 15143)
SHELBOURNE LAW FIRM
131 E. Richardson Avenue
Summerville, SC 29483
(843) 871-2210
ATTORNEYS FOR DEFENDANTS LADLES SOUPS OF MOUNT PLEASANT, LLC, ERIK DYKE AND JULIE DYKE

June 25th, 2019
Summerville, South Carolina

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

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CERTIFICATE OF SERVICE

I, the undersigned, an employee of Shelbourne Law, do hereby certify that a true and correct copy of Defendants Ladles Soups of Mount Pleasant, LLC, Erik Dyke and Julie Dyke Responses to Plaintiff's First Requests for Production which this certificate is affixed was served upon the following parties via hard copy and/or electronic mail to the following:

Ben LeClercq, Esq. LeClerq Law Firm 708 South Shelmore Blvd., Ste.202 Mount Pleasant, SC, 29406 *Attorney for Plaintiff*	Kerry Koon, Esq. 147 Wappoo Creek Dr. Wappoo Centre, Suite 203 Charleston, SC 29491 kerrykoon@hotmail.com *Attorney for Defendants, Ladles Franchising, Inc.; Ladessoups, LLC, and Tracy Allen*
Paul B. Ferrara, III, Esq. Ferrara Law 8887 Old University Blvd. 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*	

Date: June 25, 2019

Yvonne Franklin, Paralegal at Shelbourne Law

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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.	**NOTICE OF MOTION, MOTION FOR CLASS CERTIFICATION, AND MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR CLASS CERTIFICATION**

FILED
2019 SEP 11 PM 3:58
CLERK OF COURT
CHARLESTON COUNTY, SC
BY

TO: PAUL B. FERRARA, III, ESQ., P. BRANDT SHELBOURNE, ESQ., KERRY KOON, ESQ., AND M. EVAN LACKE, ESQ., ATTORNEYS FOR THE DEFENDANTS:

The Plaintiffs, by and through their undersigned counsel, within ten (10) days or hence sooner if the Court so allows hereby request the Court for an order certifying a class action pursuant to Rule 23, South Carolina Rules of Civil Procedure (SCRCP), South Carolina case law, persuasive

federal precedent, and the memorandum of law incorporated below as well as allegations contained within the Complaint. As demonstrated herein, the proposed class meets all the requirements for class certification under Rule 23, SCRCP, and thus, class treatment is appropriate in this case. Plaintiffs reserve the right to submit a supplemental Memorandum and affidavits in support of its motion prior to the hearing.

INTRODUCTION

This is an action for relief under the South Carolina Payments of Wages Act, S.C. Code § 41-10-10 et seq. ("Wages Act"). Plaintiff also alleges breach of contract and conversion, and is requesting leave to amend to add additional claims and description of fraudulent behavior by Defendants discovered not through good faith participation in discovery by Defendants, as required under the South Carolina Rules of Civil Procedure, but during the course of counsel's investigation. Plaintiff alleges that Defendants wrongfully and intentionally withheld credit card tips that were rightly intended for Plaintiff. Defendants allege to be separate franchise operations under license from a common franchisor, and Plaintiff class alleges that the illegal conversion by Defendants of credit card tips wrongfully withheld from Plaintiff class is a common scheme or policy of Defendants, that Defendants knowingly permitted or actively participated in this deceptive scheme, had the actual power to prevent the unlawful action, and/or are otherwise liable employers under the Wages Act.

To date, a substantial number of Defendants have failed to make any attempt whatsoever to respond to Plaintiffs' First Interrogatories and First Requests for Production. Despite these Defendants' abject failure to comply with discovery rules, counsel through its own investigation has determined the existence of additional class member Plaintiffs, and files herewith a motion to amend to, *inter alia*, add additional Plaintiff Lani Charpia. Plaintiff respectfully submits that when

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

all Defendants actually comply fully with their discovery obligations under the South Carolina rules, additional class members from additional locations will be revealed, and possibly additional claims as well. A motion to compel those responses is currently pending with this Court. ***See,* Plaintiffs' Motion to Compel, attached to Motion as Exhibit A.** As for the Defendants who have made at least some attempt at responding to Plaintiffs' discovery requests, they have failed to respond to certain interrogatories and requests for production with the bare minimum information to identify former and present employees which may be similarly situated as the named Plaintiff.

SUMMARY OF ARGUMENT

This action should be certified as a class action because all requirements of Rule 23(a) (numerosity, commonality, typicality, adequacy, and $100 threshold) have been met. Additionally, although not required under Rule 23(a), SCRCP, questions of fact and law common to the class predominate over any individualized questions. The class members' claims are virtually identical: each Plaintiff claims simply that Defendants have wrongfully converted and withheld credit card tips which rightly belong to the Plaintiffs. Further, a class action is the superior method for the fair and efficient adjudication of this controversy. This Court does not need to have one hundred or more identical trials when management of this class claim is unlikely to present difficulties. Food and beverage industry workers are well known for moving frequently, and therefore identifying all plaintiffs poses challenges, further buttressing the need for a class action.

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

STATEMENT OF FACTS AND PROCEDURAL BACKGROUND

A.) Statement of Facts

This is a lawsuit brought by a former employee of Ladles Soups – James Island, LLC, Craig Chappell, as well as putative additional Plaintiff Lani Charpia, on behalf of themselves and others similarly situated, alleging causes of action for failure to pay wages under the South Carolina Payment of Wages Act, breach of contract, conversion, and quantum meruit. Plaintiff alleges that Defendants wrongfully and intentionally withheld credit card tips that were rightly intended for Plaintiff and that the illegal conversion by Defendants of credit card tips is a common scheme or policy of Defendants. The existence of the policy not to pay employees credit card tips came to light when on May 6, 2016, Plaintiff Chappell discovered a handwritten ledger kept at the James Island restaurant and subsequently learned that such policy is a Ladles "group-wide" policy. The very next day Plaintiff Chappell confronted his manager, Teri Owens who is also an owner, telling her he thought it was wrong for an employer to retain credit card tips. Plaintiff Chappell was immediately terminated when he complained about the Defendants' retention of employee tips.

B.) Procedural Background

On February 14, 2018, Plaintiff commenced this action by Summons and Complaint which asserted a number of claims against the Ladles Defendants including failure to pay wages under the South Carolina Payment of Wages Act, breach of contract, and conversion. Plaintiffs encountered substantial challenges getting all the defendants served. For example, on May 31, 2018, Mr. Ferrara refused to accept service on multiple Defendants he is currently representing. After Plaintiffs were unable to effect service on all parties, on June 13, 2018 Plaintiff filed a Motion for Extension of Time to Serve Summons and Complaint and Petition for Order of

Publication which was granted by this Court on July 20, 2018. On or about June 20, 2018, three Defendants filed Answers to the Complaint. Next, an additional sixteen Defendants filed Answers on or about July 18, 2018. Finally, four additional Defendants filed Answers on or about August 1, 2018.

Subsequent to Answers being filed by Defendants, a number of motions were filed. On July 24 and 28, 2018, sixteen Defendants' Motion to Disallow Class Certification, Motion to Dismiss Improper Parties, and Motion to Dismiss based on Rule 12(b)(6) were filed. In the interim, a Consent Order exempting this matter from ADR under SCADR Rule 5(e) due to scheduling issues of all counsel was filed on December 18, 2018. Next, a hearing on Defendants' motions was held and all three motions were denied by Orders of this Court dated January 29, 2019. On February 14, 2019, a Motion to Reconsider the January 29, 2019 Order denying Defendants' Motion to Dismiss was filed on behalf of sixteen Defendants and denied by an Order of this Court dated March 6, 2019. Undersigned counsel thought it prudent, as in federal court, to await the determination of these motions before beginning discovery, and did not, for example, want to involve the court in discovery disputes for parties that might ultimately have been dismissed. Currently, Defendants' Motions for Summary Judgment and Plaintiffs' Motion to Compel, Motion for Continuance, and Motion to Intervene are pending with this Court.

PROPOSED CLASS

The class Plaintiffs request this Court to certify is defined as follows:

> All employees who worked for Defendants in Ladles restaurant locations, and were paid an hourly wage plus tips, during the three (3) years prior to the filing of this lawsuit.
>
> Excluded from the Class are all persons who properly execute and file a timely request for exclusion from the Class.

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

Plaintiffs propose an opt-out class be certified. *See Salmonsen v. CGD, Inc.*, 377 S.C. 442, 459-60, 661 S.E. 2d 81, 91 (2008) (concluding the adoption of opt-out class action and notification is the exclusive method of class action litigation in this state.

CLASS ACTION PRINCIPLES

In the interest of judicial economy, South Carolina courts give Rule 23 an expansive, rather than a restrictive construction, adopting a standard of flexibility in application which best serves the affected parties and promotes efficiency in a particular case. *Littlefield v. S.C. Forestry Comm'n*, 337 S.C. 348, 354-55, 523 S.E.2d 781, 784 (1999) (recognizing Rule 23, SCRCP, "endorses a more expansive view of class action availability"). In fact, the South Carolina Supreme Court recently touted Rule 23's expansive nature and the benefits in liberally applying Rule 23 so as to grant class certification where a court finds all of Rule 23(a)'s prerequisites are satisfied. *Grazia v. S.C.* State Plastering, LLC, 390 S.C. 562, 576, 703 S.E.2d 197, 204 (2010) ("this Court has expressed the viewpoint that class actions are favored in this state . . . ").

A.) While Required to Employ a Rigorous Analysis, this Court Retains Significant Discretion in Granting Class Certification

South Carolina courts enjoy significant discretion in reviewing a motion for class certification, and a court may certify a class if, following a "rigorous analysis," the court finds the Rule 23(a) requirements have been met. *Waller v. Seabrook Island Prop. Owners Assoc.*, 300 S.C. 465, 467, 388 S.E.2d 799, 801 (1990) ("[A] trial judge's ruling on whether an action is properly maintainable as a class action is within his discretion . . . It is imperative the court apply a rigorous analysis to assure the prerequisites of Rule 23(a) have been satisfied . . ."); *see also In re Whirlpool Corp. Front-Loading Washer Products Liability Litigation ("Whirlpool II"), F.3d 838, 851 (6th Cir. 2013) cert denied, Whirlpool Corp. v. Glazer, __ S. Ct. __, 2014 WL 684065, at *1 (Feb. 24, 2014); Comcast Corp. v. Behrend*, __U.S. __, 133 S. Ct. 1426, 1432 (2013) (noting same).

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

Although the term "rigorous analysis" is not specifically defined by our courts, the Supreme Court's formulation in *Falcon* (repeated in *Dukes*) requires the court to find: (1) the satisfaction of Rule 23 prerequisites; and (2) this satisfaction of Rule 23 prerequisites is *actual* as opposed to *presumed*. *Falcon*, 457 U.S. at 157-58; *Wal-Mart Stores, Inc. Dukes*, __ U.S. __, 131 S. Ct. 2541, 2552-53 (2011). Depending upon the case, the determination of whether Rule 23 prerequisites are "actually" satisfied *may* "entail *some* overlap with the merits of the plaintiff's underlying claim." *Id.* However, in instances where the court deems it necessary to probe behind pleadings, the court's permissible inquiry into the merits of the plaintiffs' claims at the class certification stage is specifically restricted:

> Rule 23 grants no license to engage in free-ranging merits inquires at the certification stage. Merits questions may be considered to the extent - but only to the extent - that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied.

Amgen Inc. v. Connecticut Retirement Plans & Trust Funds, __ U.S. __, 133 S.Ct. 1184, 1194-95 (2013) (citations omitted).

Thus, it is fair to conclude a court performs a "rigorous analysis" by working through each of the five Rule 23(a) requirements for class certification. If Plaintiffs' evidentiary proof of a Rule 23 requirement overlaps with a merits contention, the court may, at its discretion, touch upon the merits, but only to the extent necessary. Conversely, if Plaintiffs' evidentiary proof of a Rule 23 requirement does not overlap with a merits contention, the court may, at its discretion, not touch upon the merits at all. *See, e.g., Whirlpool II*, 722 F.3d at 851-52 (" ... courts may not tum the class certification proceedings into a dress rehearsal for the trial on the merits.") (internal citations omitted); Amgen,_ U.S. _, 13 3 S.Ct. at 1194-9 5 (limiting inquiry into a case's merits where the class certification inquiry touches upon an indispensable element of the claim and on which a failure of proof would end the case).

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

B.) The Burden is on the Plaintiff to Prove Satisfaction of Rule 23 's Requirements

Under our jurisprudence, Plaintiffs bear the burden of proving the five Rule 23(a) prerequisites necessary for maintaining a class action. *Waller*, 300 S.C. at 467, 388 S.E.2d at 801 (noting the "proponent of class certification bears the burden of proving five prerequisites under South Carolina law "); see also *Dukes*,_ U.S. __ , 131 S. Ct. at 2551 (noting the plaintiff must "affirmatively demonstrate his compliance with the Rule - that is, he must be prepared to prove [that], in fact, [the requirements of Rule 23 are satisfied.]"

Specifically, under South Carolina's Rule 23(a), the Plaintiffs must demonstrate:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the class representatives are typical of the claims or defenses of the class;

(4) the class representatives will fairly and adequately protect the interests of the class; and

(5) the amount in controversy exceeds one hundred dollars per class member.

South Carolina's Rule 23(a) is nearly identical to its federal counterpart, and accordingly, South Carolina looks favorably on federal precedent interpreting this language. *Waller,* 300 S.C. at 467, 388 S.E.2d at 801 (noting Rule 23(a), SCRCP, is principally drawn from Rule 23(a), FRCP). South Carolina's Rule 23 is materially different from the Federal Rule, however, in that it does not require Plaintiffs satisfy any predominance, superiority or ascertainability requirement in order to achieve class certification - class certification, under South Carolina law, only requires Plaintiffs satisfy the five, above-listed prerequisites. *Littlefield*, 337 S.C. at 355, 523 S.E.2d at 784 ("Our state class action rule differs significantly from its federal counterpart. The drafters of Rule

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

23, [SCRCP] intentionally omitted from our state rule the additional requirements found in [Rule 23(b), FRCP].").

DISCUSSION

This Court should grant Plaintiffs' Motion for Class Certification because Plaintiffs satisfy each of the five prerequisites necessary to maintain this class action, even under a rigorous analysis of the same, and therefore, class certification is appropriate under Rule 23(a), SCRCP.

1.) Numerosity

To satisfy Rule 23(a)'s numerosity requirement, Plaintiffs must demonstrate "the class is so numerous that joinder of all members is impracticable." Rule 23(a)(l), SCRCP. Numerosity is "not dependent on a specific number of class members," and "[t]here is no mechanical test for determining whether in a particular case the requirement of numerosity has been satisfied." *Brady v. Thurston Motor Lines*, 726 F.2d 136, 145 (4th Cir. 1984) quoting *Cypress* v. *Newport News Gen. & Nonsectarian Hosp. Ass'n*, 375 F.2d 648,653 (4th Cir. 1967); *Kelley v. Norfolk & W Ry. Co.*, 584 F.2d 34, 35 (4th Cir. 1978) ("The issue [of numerosity] is one primarily for the [c]ourt, to be resolved in light of the facts and circumstances of the particular case."). Indeed, "numerosity" is really a question of "impracticable joinder" which "depends on many factors, including, for example, the size of the class, ease of identifying its numbers and determining their addresses, facility of making service on them if joined and their geographic dispersion." *George v. Duke Energy Ret. Cash Balance Plan*, 259 F.R.D. 225, 231 (D.S.C. 2009) (citations omitted).

Here, the record contains sufficient documentation evidencing the size of the proposed class is potentially so numerous that joinder is impractical. Simply stated, there are at least seventy-five current and former food service employees of the Defendants, all of whom qualify as potential class members because the named Plaintiff alleges there was a policy in place at most or

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

all of the Defendant franchises allowing the management at the different restaurants to keep the credit card tips the hourly food service employees were entitled to in violation of the South Carolina Wage Payment Act. In his affidavit, Mr. Chappell attests that "[w]hile I was employed at Ladles James Island, there were approximately seven hourly food service employees." Additionally, in her affidavit, Ms. Charpia attests that "In the year and a half that I have worked at Ladles West Ashley, I have seen approximately more than ten hourly paid food service employees come and go." ***See,* Complaint and Affidavits of Craig Chappell and Lani Charpia, attached to Motion as Exhibits B, C, and D.** This policy has not only affected past and present employees but will certainly affect future employees as well. *See, e.g., Cypress*, 375 F.2d at 652-54 (Fourth Circuit approving certification of class containing 18 potential members). Given that there are over seventy-five hourly food service employees who did not receive their credit card tips due to the policy in place at the Defendant franchises, there are clearly enough plaintiffs to satisfy any "numerosity" requirement for class certification.

An example of another hourly food service employee is Lani Charpia whose motion to intervene is currently pending in this Court. ***See,* Lani Charpia's Motion to Intervene, attached to Motion as Exhibit E**. Ms. Charpia has been employed as a server at Ladles West Ashley since approximately February, 2018, and has attested to the same allegations made by the named Plaintiff in the Complaint. Specifically, Ms. Charpia attests that her Defendant employer withholds her credit card tips and the credit card tips of all hourly food service employees – "I am an hourly paid food service employee at Ladles West Ashley and all of my credit card tips are whithheld," "Ladles West Ashley has a policy of withholding all credit card tips from all hourly paid food service employees." ***See,* Affidavit of Lani Charpia.**

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

Furthermore, Plaintiff also satisfies the impractical joinder analysis given that the joinder of seventy-five hourly food service employees, some dispersed throughout a sizable geographic area, is difficult and impractical to achieve, and difficult to manage if achieved. *See*, e.g., *City of Ann Arbor Employees' Retirement Sys. v. Sonoco Prods. Co.*, 270 F.R.D. 247, 251 (D.S.C. 2010) (granting plaintiff's class certification motion, in part, on the basis that "[g]iven the number and likely geographical dispersion of potential class members, joinder would be impracticable). The class is composed of every tipped employee that worked at Defendants' locations in the three years prior to the filing of this lawsuit. This class likely consists of over seventy-five persons geographically dispersed throughout the state of South Carolina and in other states, the joinder of whom in one action is impractical. This is particularly the case here and is evidenced by the fact that the Ladles Defendants have locations all throughout the state of South Carolina and because service in the food and beverage industry is transient by nature, restaurants require numerous employees, and Defendants are likely the sole source of contact information for members of the Plaintiff class.

Moreover, the refusal by the majority of Defendants to respond at all to Plaintiffs' discovery requests and the refusal of the other Defendants to respond to Plaintiffs' requests for basic information to identify their employees has substantially impeded Plaintiffs' attempts to further develop the class members. This information would further show that such a class would likely be composed of a substantial number of people further fulfilling the numerosity requirement.

2.) Commonality

South Carolina's Rule 23 commonality requirement is satisfied if at least one common legal or factual question exists among Class members. *McGann v. Mungo*, 287 S.C. 561, 568, 340 S.E.2d 154, 157 (Ct. App. 1986) (noting "a single, common question" can fulfill the Rule 23(a)(2),

SCRCP, commonality requirement) (citations omitted); *see also Dukes*,_ U.S._, 131 S. Ct. at 2556 (noting Rule 23(a) does not require that all questions of law or fact raised in the litigation be common; indeed, even a single question of law or fact common to the members of the class will satisfy the commonality requirement.); *Nagareda*, The Preexistence Principle and the Structure of the Class Action, 103 Colum. L. Rev. 149, 176, n. 110 (2003) (For purposes of Rule 23(a)(2), "even a single common question will do."). "A question is ordinarily understood to be a subject or point open to controversy ... [t]hus, a question common to the class must be a dispute, either of fact or of law, the resolution of which will advance the determination of the class members' claims." *Dukes*, _U.S._, 131 S. Ct. at 2562. (dissent). Similarly stated, what is necessary for certification are common issues, the resolution of which will advance the litigation. *McGann*, 287 S.C. at 568, 340 S.E.2d at 157 ("Ultimately, commonality is a judgment that the issues are sufficiently similar so that the class action will be a more efficient means of resolving the problem ... ") (citations omitted); *Dukes*,_ U. S._, 131 S. Ct. at 2551 (noting commonality requires "a common contention of such a nature that it is capable of class-wide resolution -- which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke."); *Nagareda*, Class Certification in the Age of Aggregate Proof, 84 N.Y.U.L. Rev. 97, 132 (2009) ("What matters to class certification .. .is not the raising of common questions ... but, rather the capacity of a class wide proceeding to generate common answers apt to drive the resolution of the litigation.")

Here, Plaintiffs demonstrate as least five primary questions, all of which will produce answers central to the validity of Plaintiffs' claims:

(1) Whether class members worked as service employees in Ladles restaurants;

(2) Whether class members were paid on an hourly basis plus tips;

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

(3) Whether Defendants illegally refused to pay Plaintiff and class members credit card tips they earned, instead unlawfully retaining and converting the same;

(4) Whether Defendants have acted or refuse to act on grounds generally applicable to the class; and

(5) Whether Plaintiffs and the class members are entitled to damages from the Defendants.

In addition to raising common questions, Plaintiffs' claims also arise from a common nucleus of facts given there was a policy in place in the Defendant franchises allowing the management at the different restaurants to keep the credit card tips the service employees were entitled to. These common facts affirmatively establish both (a) the Plaintiffs' common injury – they all were subject to the Defendants' policy which is in violation of the South Carolina Wages Act; and (b) the Plaintiffs' common damages – the loss of income from credit card tips. ***See,* Complaint and Affidavits of Craig Chappell and Lani Charpia.**

Because Plaintiffs' claims are essentially based upon the same contentions (i.e., violation of the South Carolina Wages Act), and the evidence confirms these contentions are common among Plaintiffs, it follows said contentions are "of such nature that [they] are capable of class-wide resolution." Dukes, _ U.S. _, 131 S. Ct. at 2551. In other words, proof of loss of credit card tips due to the Defendants withholding of credit card tips exist as to the named Plaintiff, and therefore, class certification is appropriate because the class action vehicle best serves to resolve such "common" issues "in one stroke" for all members of the class. *Jd.*

3.) Typicality

In addition to satisfying Rule 23(a)'s commonality requirement, Plaintiffs also sufficiently satisfy Rule 23(a)' s typicality requirement. Typicality is satisfied if "the claims or defenses of the [class representative] are typical of the claims or defenses of the class." Rule 23(a)(3), SCRCP. Typical does not mean identical, and Rule 23(a)'s typicality requirement is satisfied if the class

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

members' claims are "fairly encompassed by the named plaintiffs' claims." *Whirlpool II*, 722 F.3d at 852. In other words, the principal "typicality" inquiry is whether the class representative's claims have the same essential characteristics as the claims of the other members of the class. As the Supreme Court observed in *Dukes*, the typicality analysis aids courts in "determining whether under the particular circumstances maintenance of a class action is economical and whether the named Plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence." *Dukes*,_ U.S. __ , 13 1 S.Ct. at 2551, n.5 quoting *Falcon*, 457 U.S. at 157-158, n.13.

The practice of withholding the employees' credit card tips was not just limited to one employee. It was a widespread policy applied across the board and that has affected and continues to affect several past and present employees. Mr. Chappell attests that "[w]hile I was employed at Ladles James Island, it had a policy of withholding all credit card tips from all hourly paid food service employees." Additionally, Ms. Charpia attests that "Ladles West Ashley has a policy of withholding all credit card tips from all hourly paid food service employees." ***See,* Affidavits of Craig Chappell and Lani Charpia.** And because it was a common practice that affected a substantial number of employees, the named Plaintiff was not the only one affected and his claims are representative of the claims of the entire class.

In light of the foregoing, Plaintiffs clearly satisfy Rule 23(a)'s typicality requirement because the claims asserted by the named Plaintiff are typical of the claims of the class. Specifically, the named Plaintiff shares attributes typical of each proposed class member. Indeed, the named Plaintiff's claims are based upon a common nucleus of operative facts arising out of Defendants' common course of conduct which directly involved the employment of the class members and the improper withholding of charged tips from them. Accordingly, the named

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

Plaintiff's claims arise from the same practice giving rise to the claims of the Class - Defendants' policy of improperly withholding charged tips. Accordingly, the named Plaintiff and the proposed class necessarily pursue the same legal theories: the named Plaintiff was employed by the Defendants and the Defendants improperly withheld his credit card tips. Exactly like the named Plaintiff, the proposed class are or have been employed by the Defendants and the Defendants have or currently are improperly withholding their charged tips. Where, as here, the named Plaintiff and all class members have had their credit card tips improperly withheld and they advance the same legal theories regarding that practice, the typicality requirement is satisfied.

In sum, Plaintiffs' claims are legally and factually consistent with those sought on behalf of the proposed class, and thus, the named Plaintiff's claims are typical of the class members' claims under Rule 23(a). *See In Re: Cox Enterprises, Inc. Set-Top Cable Television Box Antitrust Litigation*, 2014 WL 104964 at *4 (W.D. Ok. 2014) ("Differing fact situations of class members do not defeat typicality under Rule 23(a)(3) so long as the claims of the class representative and class members are based on the same legal or remedial theory.") (citations omitted).

4.) Adequacy

The principal factor in determining the adequacy of a class representative is whether the named Plaintiff has the ability and commitment to prosecute the action vigorously. *South Carolina Nat'l Bank v. Stone*, 139 F.R.D. 325, 329-30 (D.S.C. 1991). There are two criteria to which courts look in determining whether the class representative adequately protects the interests of the class: (1) The class representatives should not have any significant antagonistic or conflicting interests to the unnamed class members; and (2) it must appear the class representatives will vigorously prosecute the interests of the class through qualified counsel. *Runion v. US Shelter*, 98 F.R.D. 3_13, 316 (D.S.C. 1983); *Nat 'l Ass 'n of Regional Med. Programs, Inc. v. Matthews*, 551 F.2d

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

340, 345 (D.C. Cir. 1976), cert. denied, 431 U.S. 954 (1977). In addition, it must appear the class representatives voluntarily accept the fiduciary relationship towards all the members of the putative class. *Id.*

As a former employee of a Ladles Defendant that had a policy of withholding credit card tips, the named Plaintiff "possess the same interest and suffers the same injury as the class members." *Gunnells v. Healthcare Services, Inc.*, 348 F.3d 417, 425 (4th Cir. 2003). Indeed, no material conflict exists between the named Plaintiff (former employee of Defendants) and the class members he seeks to represent (also former and current employees of Defendants). Moreover, the named Plaintiff and his counsel are committed to aggressively pursuing this litigation on behalf of the other class members who had credit card tips improperly withheld from them. ***See,* Affidavit of Craig Chappell.** Notably, Plaintiff's counsel has practiced before this Court, as well as federal court, in a number of complex commercial commercial, employment, FLSA and consumer actions, and thus, the Court is aware of counsel's competency in litigating complex actions.

5.) Amount in Controversy

The final Rule 23(a) prerequisite requires the "amount in controversy" to exceed one hundred dollars for each member of the proposed class. This amount is based on the amount claimed by the Plaintiffs, and where Plaintiffs claim damages greater than one hundred dollars per class member, the "amount in controversy" requirement is satisfied. *Gardner v. Newsome Chevrolet-Buick*, 404 S.E.2d 200,201 (S.C. 1991). In this case it will be the total amount of the credit card tips Defendants withheld from each employee combined with the damages each employee is entitled to under the law, which, under the South Carolina Payment of Wages Act, is three times the amount of the credit card tip each employee did not receive. In his affidavit, Mr. Chappell attests that "[b]ased on my knowledge and experience working at Ladles James Island, I

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

believe that well over $100.00 in charged credit card tips were withheld from each hourly food service employee." Additionally, in her affidavit, Ms. Charpia attests that "I have worked at Ladles West Ashley for approximately a year and half. I regularly see the end of day credit card reports and they show the amount of charged tips for the entire day. On a typical day, the amount of charged tips for the day is at least $100." ***See*, Affidavits of Craig Chappell and Lani Charpia.** Thus, based upon those rules, meeting the jurisdictional hundred dollars threshold is feasible for each Plaintiff in the case.

CONCLUSION

Based upon the foregoing, Plaintiffs affirmatively satisfies the requirements of Rule 23(a), SCRCP, and therefore, class certification is appropriate. Class certification streamlines the adjudication of a large unknown and to date unknowable number of claims concerning Defendants' illicit conversion of wages and credit card tips intended for Plaintiffs, and provides a superior avenue for much needed relief to all similarly situated class members. Accordingly, Plaintiffs respectfully request the Court issue an Order:

(1) Certifying this action as a class action;

(2) Appointing Plaintiffs, Craig Chappell and Lani Charpia, as class representatives;

(3) Appointing Ben Le Clercq as class counsel; and

(4) Authorizing class counsel to provide opt-out notice to the class.

WHEREFORE, Plaintiffs respectfully request that this Court grant this Motion for Class Certification.

Respectfully submitted,

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Phone (843) 722-3523
Counsel for Plaintiffs

September 11, 2019
Mt. Pleasant, South Carolina

CERTIFICATE OF SERVICE

I, Debbie Mathews, certify that on September 11, 2019, a true and correct copy of the foregoing **NOTICE OF MOTION, MOTION FOR CLASS CERTIFICATION, AND MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR CLASS CERTIFICATION** was served upon counsel for Defendants, via electronic mail as follows:

Kerry Koon - kerrykoon@hotmail.com
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Debbie Mathews
Debbie Mathews

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

A

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-10-785
CRAIG CHAPPELL, on behalf of himself and others similarly situated, Plaintiff(s), v. Ladles Soups – James Island LLC; Ladlessoups, LLC; Ladles Soups At Cane Bay LLC; Ladles Soups At Citadel Mall LLP; Ladles Soups Calhoun LLC; Ladles Soups Cane Bay LLC; Ladles Soups Coosaw LLC; Ladles Soups Downtown Charleston, LLC; Ladlessoups Fresh Fields, LLC; Ladles Soups @ Freshfields Village, LLC; Ladlessoups Mainstreet, LLC; Ladles Soups Moncks Corner LLC; Ladlessoups Mount Pleasant, LLC; Ladles Franchise Development, LLC; Ladles Franchising Inc.; Ladles Fort Mill, LLC; Ladles Knightsville LLC; Ladles West Ashley; Teri Owens; Sue Allen, Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke, Stan Sutton, Carol Sutton, Jason Dalter, Kellie Henderson; Jane Doe 1-25 (Unknown Operating Company and Management Company Owners); John Doe 25-40 (Management Personnel) Defendants.	**PLAINTIFFS' MOTION TO COMPEL DISCOVERY RESPONSES TO PLAINTIFS' FIRST INTERROGATORES AND FIRST REQUESTS FOR PRODUCTION FROM DEFENDANTS LADLES SOUPS – JAMES ISLAND, LLC; LADELES SOUPS FRESH FIELDS, LLC; LADLES SOUPS @ FRESHFIELDS VILLAGE, LLC; LADLES FRANCHISE DEVELOPMENT, LLC; LADLES SOUP DOWNTOWN CHARLESTON, LLC; LADLES FORT MILL,LLC; LADLES SOUPS MONCKS CORNER, LLC; LADLES KNIGHTSVILLE, LLC; LADLES WEST ASHLEY; LADLES SOUPS COOSAW, LLC; DAN SUTTON; CAROL SUTTON; STEVEN TRAEGER; AND KELLI HENDERSON**

Plaintiffs, by and through undersigned counsel, move this Honorable Court to order that Defendants Ladles Soups – James Island LLC; Ladles Soups Coosaw LLC; Ladles Soups Downtown Charleston, LLC; Ladlessoups Fresh Fields, LLC; Ladles Soups @ Freshfields Village, LLC; Ladles Soups Moncks Corner LLC; Ladles Franchise Development, LLC; Fort Mill, LLC; Ladles Knightsville LLC; Ladles West Ashley; Teri Owens; Steve Traeger; Stan Sutton; Carol

Sutton; and Kellie Henderson, ("Defendants"), respond fully to Plaintiffs' discovery requests. Defendants, through their attorney, Paul B. Ferrara, III, have failed to respond at all since being served with the requests on May 24, 2019. **Ex. A (Email serving First Interrogatories and First Requests for Production); Ex. A.2 (First Interrogatories and First Requests for Production).** Pursuant to SCRP Rule 11, Plaintiffs' counsel communicated with Defendants' counsel by email on July 12, 2019 and August 14, 2019 to resolve the issue. **Ex. B (emails to counsel for Defendants).** Ninety days have elapsed without Defendants producing any response at all and without Defendants even requesting an extension. Plaintiffs also ask the Court to find that Defendants have waived objections to all such requests due to its failure to provide these discovery responses.

Respectfully Submitted,

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David D. Ashley (S.C. Bar #76206)
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Counsel for Plaintiff

August 22, 2019
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ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

CERTIFICATE OF SERVICE

I, Debbie Mathews, certify that on August 22, 2019, a true and correct copy of the foregoing **PLAINTIFF'S MOTION TO COMPEL DISCOVERY RESPONSES TO PLAINTIFFS' FIRST INTERROGATORIES AND FIRST REQUESTS FOR PRODUCTION FROM DEFENDANTS** was served upon counsel for Defendants, via electronic mail as follows:

Kerry Koon - kerrykoon@hotmail.com
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ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

B

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STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	CASE NO.:
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.	VERIFIED COMPLAINT TO RECOVER MISAPPROPRIATED TIPS (Class Action) (Jury Trial Demanded)

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JULIE J. ARMSTRONG
CLERK OF COURT
BY

COMES NOW PLAINTIFF, CRAIG CHAPPELL, ("Plaintiff"), individually, and on behalf of all others similarly situated, complaining of the Defendants named herein, and respectfully alleges and would show the Court as follows:

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

PARTIES, JURISDICTION & VENUE

1. Plaintiff CRAIG CHAPPELL is and at all times relevant herein was an individual resident of the City of Charleston, in Charleston County.

2. Plaintiff and proposed class member Plaintiffs are hourly paid employees who worked for Defendants within the last three (3) years at Defendants' Ladles restaurants as cooks, servers, wait staff, hostesses and other restaurant service type employees (hereinafter "servers" or "Class Members"), who were unlawfully deprived of payment of tips by Defendants' illegal and unlawful actions, and who respectfully seek relief under the South Carolina Payment of Wages Act, S.C. Code § 41-10-10 et seq. ("Wages Act") and other applicable law.

3. Plaintiff files this Complaint against Defendants, who generally fall in several categories: a) Company/Corporate Restaurant Defendants that own or run Ladles Soups restaurants, some of which may be franchises; b) Individual Owners of Ladles Company/Corporate entities and/or franchises with supervision, control and/or direction of employee compensation; c) High level management/officers/employees of "a" with supervision, control and/or direction of employee compensation; d) "Jane Doe" and "John Doe" Defendants, indicating Defendants for whom Plaintiff has not yet been able to determine the identity without the aid of discovery.

4. Operating Company Defendants. Plaintiff has identified the following companies and/or corporations which, upon information and belief, currently or previously own and/or operate Ladles restaurants (sometimes referred to collectively as "Operating Company Defendants"):

a. Ladles Soups – James Island LLC, which upon information and belief is a company organized and existing under the laws of South Carolina, and which has its principal place of business as a Ladles restaurant located at 1175A Folly Road Charleston, SC 29412.

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

b. Ladlessoups, LLC, which upon information and belief is a company organized and existing under the laws of South Carolina, and which has its principal place of business as a Ladles restaurant located at 3125 Bees Ferry Road, Charleston, SC 29414.

c. Ladles Soups At Cane Bay LLC, which upon information and belief is a company organized and existing under the laws of South Carolina, and which had its principal place of business (but is now closed) as a Ladles restaurant located at 1724 State Road, Summerville, SC 29483. It was formed May 9, 2013.

d. Ladles Soups At Citadel Mall LLP, which upon information and belief is a company organized and dissolved under the laws of South Carolina, and which had its principal place of business as a Ladles restaurant located on Sam Rittenberg Blvd., just south of the Citadel Mall, Charleston, SC 29412.

e. Ladles Soups Calhoun LLC, which upon information and belief is a company organized and existing under the laws of South Carolina, and which had its principal place of business as a Ladles restaurant located at 141 Calhoun Street, Charleston, SC 29401, and/or 68 Cannon Street, Charleston, SC 29401.

f. Ladles Soups Cane Bay LLC, which upon information and belief is a company organized and existing under the laws of South Carolina, and which had its principal place of business (but is now closed) as a Ladles restaurant located at 1724 State Road, Summerville, SC 29483. It was formed January 26, 2015.

g. Ladles Soups Coosaw LLC, which upon information and belief is a company organized and existing under the laws of South Carolina, and which has its principal place of business as a Ladles restaurant located at 8600 Dorchester Road Ste. 101, North Charleston, SC 29420.

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

h. Ladles Soups Downtown Charleston, LLC, which upon information and belief is a company organized and existing under the laws of South Carolina, and which has its principal place of business as a Ladles restaurant located at 68 Cannon Street, Charleston, SC 29403.

i. Ladlessoups Fresh Fields, LLC, which upon information and belief is a company organized and existing under the laws of South Carolina, and which has its principal place of business as a Ladles restaurant located at 190 Gardeners Circle, Johns Island, SC 29455.

j. Ladles Soups @ Freshfields Village, LLC, which upon information and belief is a company organized and dissolved under the laws of South Carolina, and which had its principal place of business located at 190 Gardeners Circle, Johns Island, SC 29455.

k. Ladlessoups Mainstreet, LLC, which upon information and belief is a company organized and dissolved under the laws of South Carolina, and which had its principal place of business as a Ladles restaurant located at 100 W. Richardson Ave., Summerville, SC 29483.

l. Ladles Soups Moncks Corner LLC, which upon information and belief is a company organized and existing under the laws of South Carolina, and which has its principal place of business as a Ladles restaurant located at 636 Rembert C. Dennis Blvd., Moncks Corner, SC 29461.

m. Ladlessoups Mount Pleasant, LLC, which upon information and belief is a company organized and existing under the laws of South Carolina, and which has its principal place of business as a Ladles restaurant located at 1164 Basketweave Drive, Mount Pleasant, SC 29466.

n. Ladles Fort Mill, LLC, which upon information and belief is a company organized and existing under the laws of South Carolina, and which has its principal place of business as a Ladles restaurant located at 526 Mercantile Place, Fort Mill, SC 29715.

o. Ladles Knightsville LLC, which upon information and belief is a company organized and existing under the laws of South Carolina, and which has its principal place of business as a Ladles restaurant located at 1585 Central Avenue, Summerville, SC.

p. Ladles West Ashley, which upon information and belief is a company organized and existing under the laws of South Carolina, and which has its principal place of business as a Ladles restaurant located at 3125 Bees Ferry Road, Charleston, SC 29414.

5. Management Company Defendants. Plaintiff has identified the following companies and/or corporations, which, upon information and belief, developed and/or required tipping policies upon information and belief common to all Ladles restaurants described more fully herein (such parties sometimes referred to herein as "Management Company Defendants).

a. Ladles Franchise Development, LLC, is a South Carolina company licensed to conduct and in upon information and belief in fact conducting business in the State of South Carolina, and at all material times during Plaintiffs' employment, acting as an employer under applicable law.

b. Ladles Franchising Inc. is a South Carolina corporation licensed to conduct and in upon information and belief in fact conducting business in the State of South Carolina, and at all material times during Plaintiffs' employment, acting as an employer under applicable law.

6. Individual Defendants. Plaintiff has identified the following individuals (sometimes referred to collectively herein as "Individual Defendants"), who, upon information and belief, are individual owners of the Operating Company Defendants, the Management Company Defendants,

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

and/or individuals: i) with supervisory, management, and/or other responsibility for employee compensation, including payment or non-payment of tips to employees; ii) that knowingly permitted or allowed the actions complained of herein, iii) that are agents and/or officers of the Operating Company Defendants and/or the Management Company Defendants of herein, iv) that actively participated in the unlawful action complained of herein, v) that had the actual power to prevent or allow the unlawful action complained of herein, or vi) that are employers of Plaintiff Class Members under applicable law.

a. Susan "Suzie" Allen, who upon information and belief resides and/or conducts business at the address of 2345 Brevard Road, Charleston, SC 29414, and is a founder of the Lades soup restaurant concept, an originator and/or architect of the unlawful actions complained of herein and an owner of one or more Operating Company Defendants and/or Management Company Defendants;

b. Teri Owens, Manager of Ladles Soups – James Island LLC.

c. Tracy Allen, who upon information and belief resides and/or conducts business at the address of 2345 Brevard Road, Charleston, SC 29414, and is a founder of the Lades soup restaurant concept, an originator and/or architect of the unlawful actions complained of herein and an owner of one or more Operating Company Defendants and/or Management Company Defendants;

d. Steve Traeger, Owner of Franchise Development, Ladles Soups Franchising, LLC.

e. Erik Dyke, Owner of Ladlessoups Mount Pleasant, LLC.

f. Julie Dyke, Owner of Ladlessoups Mount Pleasant, LLC.

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

g. Stan Sutton, Owner of Ladlessoups Fresh Fields, LLC and Ladles Soups @ Freshfields Village, LLC.

h. Carol Sutton, Owner of Ladlessoups Fresh Fields, LLC and Ladles Soups @ Freshfields Village, LLC.

i. Jason Dalter, Owner of Ladlessoups Mainstreet, LLC.

j. Kellie Henderson, Owner of Ladles Soups Coosaw LLC.

7. Jane Doe 1-25 (Operating Company and Management Company Owners) (hereinafter "Jane Doe 1-25 Defendants"), are Operating Company and/or Management Company owners, members, and/or franchisees, whose identities are unknown at this time: i) with supervisory, management, and/or other responsibility for employee compensation, including payment or non-payment of tips to employees; ii) that knowingly permitted or allowed the actions complained of herein, iii) that are agents and/or officers of the Operating Company Defendants and/or the Management Company Defendants herein, iv) that actively participated in the unlawful action complained of herein, v) that had the actual power to prevent or allow the unlawful action complained of herein, or vi) that are employers of Plaintiff Class Members under applicable law.

8. John Doe 25-40 (Management Personnel) (hereinafter "John Doe 25-40 Defendants"), are management officers and/or employees of Operating Company and/or Management Company Defendants, whose identities are unknown at this time: i) with supervisory, management, and/or other responsibility for employee compensation, including payment or non-payment of tips to employees; ii) that knowingly permitted or allowed the actions complained of herein, iii) that are agents and/or officers of the Operating Company Defendants and/or the Management Company Defendants of herein, iv) that actively participated in the unlawful action

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

complained of herein, v) that had the actual power to prevent or allow the unlawful action complained of herein, or vi) that are employers of Plaintiff Class Members under applicable law.

NATURE OF CASE

9. Defendants' conduct as alleged herein is in violation of the Wages Act, and other applicable law relating to *inter alia* breach of contract and conversion.

10. This action is to recover from Defendants damages and reasonable attorneys' fees and costs. This action is intended to include each and every hourly paid employee who worked for Defendants at any time within the past three (3) years.

11. This Court has jurisdiction and venue over this Complaint as certain Defendants' principal addresses and places of business are in Charleston County, South Carolina, and since actions giving rise to this Complaint occurred in Charleston County, South Carolina.

GENERAL FACTUAL ALLEGATIONS

12. Plaintiff and the Class Members were paid an hourly wage, plus tips.

13. However, though Plaintiff and the Class Members worked for and earned cash tips as well as tips paid by credit card, Defendants' company wide policy, upon information and belief, was and has been at all times relevant herein, to allow Plaintiff and Class Members to retain some cash tips, but for Defendants to retain the credit card tips which rightly belong to Plaintiff and the Class Members.

14. For example, at Plaintiff Craig Chappell's location, Ladles Soups—James Island, LLC ("Ladles James Island"), the employer's practice was to distribute cash tips to all employees, but to retain tips charged on credit cards.

15. At the original location in West Ashley (business name Ladlessoups, LLC) ("Ladles West Ashley") at 3125 Bees Ferry Road, the employer's practice was upon information

and belief to distribute a day's cash tips amongst all employees working that day, but retain tips charged by customers to credit cards.

16. The policy at Ladles West Ashley was promulgated by the store owner who is, on information and belief, a founder of Ladles restaurant concept, Defendant Sue Allen.

17. Sue Allen is the registered agent for Ladles West Ashley according to the S.C. Secretary of State website.

18. At all material times, Operating Company Defendants and Management Company Defendants were enterprises subject to the Wages Act and other applicable common law of South Carolina.

19. Defendants are in the business of providing food and drinks to the general public.

20. Defendants employed Plaintiff and the Class Members in the last three (3) years.

21. Defendants controlled and/or were responsible for the work of Plaintiff and the Class Members.

22. Plaintiff and the Class Members perform a specific job, i.e., ensuring that all food and products are consistently prepared and served according to the restaurant's policies, and controlling cash and other receipts by adhering to cash handling and reconciliation procedures in accordance with restaurant policies and procedures, which was/is an integral part of the restaurant business of Defendants.

23. Plaintiff and the Class Members worked for and earned tips in addition to their hourly wage, and such tips constitute an important part of Plaintiff and the Class Members' total wages and compensation. Plaintiffs are entitled to all tips they earn, under applicable law, including contract law.

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

24. The majority of the tips were paid by credit cards, and upon information and belief, only a small minority of tips were paid by Defendants' customers in cash.

25. Defendants' customers reasonably understood and expected that by paying tips via credit card, that Plaintiff and other Class Members would receive those tips.

26. Plaintiff and the Class Members worked for, earned and in fact received cash tips during each shift.

27. However, by contrast Defendants illegally failed to pay Plaintiff and the Class Members the credit card charge tips, and instead retained them for the benefit of Defendants.

28. All tips are the property of the servers and other employees such as Plaintiff and the Class Members.

29. As a result of these common policies, Plaintiff and the Class Members are entitled to repayment of all tips that were illegally retained by Defendants.

30. During their employment, Plaintiff or one or more of the Class Members complained about the illegal practices to Defendants' management, and Defendants took no action to stop the illegal practices.

31. On or about Friday, May 6, 2016, Plaintiff or one or more of the Class Members discovered that the owner of Defendant Ladles James Island was not paying employees charged tips, by virtue of discovering a handwritten ledger kept at the James Island restaurant. Plaintiff subsequently learned that such policy is a Ladles "group-wide" policy.

32. At Ladles James Island on or about Saturday, May 7, 2016, Plaintiff Chappell confronted his manager, Teri Owens, who upon information and belief is an owner of Ladles James Island, telling her he thought it was wrong for employer to pay employees only cash tips but retain charged tips.

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

33. Defendant Ladies James Island immediately terminated Mr. Chappell when he complained about Defendants' retention of employee tips, in retaliation for Mr. Chappell's attempting to claim tips that are and were rightfully his (and that of other similarly situated Class Members), such rights to the same being guaranteed to Mr. Chappell and Class Members by applicable law.

34. The additional persons who are Class Member plaintiffs in this action are employees with positions similarly situated to Plaintiff and who have suffered from the same pay practices of unlawfully misappropriated, converted tips.

CLASS ACTION ALLEGATIONS

35. Pursuant to the common law of South Carolina and SCRCP 23, Plaintiff brings this action both individually and as a proposed class action against Defendants on behalf of himself and all other similarly situated persons and entities, who were employed by Defendants and were paid an hourly wage plus tips.

36. The class of similarly situated employees or potential Class Members sought to be certified under SCRCP 23 is defined as:

> **All employees who worked for Defendants in Ladies restaurant locations, and were paid an hourly wage plus tips, during the three (3) years preceding this lawsuit.**

The claims under the Payment of Wages Act may be prosecuted on behalf of similarly situated Plaintiffs unless they opt out.

37. *Numerosity.* The class is upon information and belief composed of in excess of seventy-five persons geographically dispersed throughout the state of South Carolina and in other states, the joinder of whom in one action is impractical. In particular, service in the food

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

and beverage industry is transient by nature; restaurants require numerous employees, and Defendants are likely the sole source of contact information for members of the Plaintiff class.

38. *Commonality*. Questions of law and fact common to the class exist as to all members of the class and predominate over any questions affecting only individual members of the class. These common legal and factual issues include the following:

a. Whether Class Members worked as service employees in Ladles restaurants;

b. Whether Class Members were paid on an hourly basis plus tips;

c. Whether Defendants illegally refused to pay Plaintiff and Class Members credit card tips they earned, instead unlawfully retaining and converting the same;

d. Whether Defendants have acted or refuse to act on grounds generally applicable to the class;

e. Whether Plaintiffs and the Class Members are entitled to damages, prejudgment interest, attorney's fees and costs from Defendants.

39. *Typicality*. Plaintiff Chappell's claims are typical of the claims of the members of the class, as all such claims arise out of Defendants' wrongful conduct in illegally refusing to pay their hourly employees tips earned by them and paid by Defendants' customers via credit card, and instead wrongfully, deliberately and deceitfully withholding them. It would be difficult to meaningfully distinguish the claims of Plaintiff Class Members *inter se*.

40. *Adequate Representation*. Plaintiff Chappell will fairly and adequately protect the interests of the members of the class and has no interests antagonistic to those of the class. Plaintiff has retained counsel experienced in the prosecution of employment claims and complex litigation, including collective actions.

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

41. *Predominance and Superiority.* Because Defendants' treatment of Plaintiff Class Members is narrowly focused on a single specific issue—Defendants' unlawful misappropriation and conversion of charged tips--this class action is appropriate for certification because questions of law and fact common to the members of the class predominate over questions affecting only individual members. For the same reason, the class action is superior to other available methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the class is impractical. Should individual members of the class be required to bring separate actions, this court would be confronted with a multiplicity of lawsuits burdening the court system while also creating the risk of inconsistent rulings and contradictory judgments. In contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties in the court system, this class-action presents far fewer management difficulties while providing unitary adjudication, economies of scale and comprehensive supervision by a single Court.

42. *Defendants have acted on grounds generally applicable to the class.* Class certification is appropriate under South Carolina law because Defendants engaged in a uniform and common practice—they misappropriated and unlawfully converted charged tips which rightfully belong to Plaintiff Class Members. In doing so, Defendants acted in a manner consistently vis-à-vis Plaintiff Class Members. All Class Members have the same legal right and interest in redress for damages associated with the illegal retention of credit card tips paid by Defendants' customers, which rightly belong to Plaintiff and the other Class Members.

43. Plaintiff envisions no unusual difficulty in the management of this action as a class action.

44. Per SCRCP 23(a), each plaintiff's damages exceeds $100.

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

45. The amount of money at stake for each class member is not sufficient for each member to hire their own counsel and bring their own action, which constitutes additional grounds making the class action appropriate here.

COUNT I
(Class Action – Nonpayment of wages under S.C. Code § 41-10-40)

46. Plaintiff realleges and reincorporates all previous allegations as if fully incorporated herein.

47. Plaintiff and Class Members seek damages under the Wages Act as a class action.

48. Tips are wages under the act because, per S.C. Code § 41-10-10(2), they are amounts at which Plaintiffs' labor rendered is recompensed, and because it was both the policy of Defendants, and a term of Plaintiffs' employment agreements with Defendants, to pay Plaintiffs the tips customers gave them—especially evidenced by the Defendants' practice of letting Plaintiffs keep their cash tips.

49. Each tip was the property of each Plaintiff to whom a customer had given the tip, and such tips constitute wages and remain due and owing to the Plaintiffs under the Wages Act.

50. Defendants were not permitted to divert or withhold tips because upon information and belief they failed to give written notice to Plaintiffs of the amounts and terms of deductions, as required by S.C. Code § 41-10-30(A).

51. Defendants upon information and belief failed to give employees itemized statements showing the retention or diversion of credit card tips for each pay period, as required by S.C. Code § 41-10-31(C).

52. Operating Company Defendants and Management Defendants were responsible for paying Plaintiffs. Moreover, Individual Defendants, Jane Doe 1-25 Defendants and John Doe 25-40 Defendants i) with supervisory, management, and/or other responsibility for employee

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

compensation, including payment or non-payment of tips to employees; ii) that knowingly permitted or allowed the actions complained of herein, iii) that are agents and/or officers of the Operating Company Defendants and/or the Management Company Defendants herein, iv) that actively participated in the unlawful action complained of herein, v) that had the actual power to prevent or allow the unlawful action complained of herein, or vi) that are employers of Plaintiff Class Members under applicable law, were similarly responsible for paying Class Members.

53. The Ladles West Ashley policy was promulgated upon information and belief by the store owner, founder Sue Allen, to store employees via the store's manager. As such, Sue Allen knowingly permitted the tip policy, actively participated in it, and had actual power to pay employees, since she decided what the terms of their tip compensation were.

54. This pattern has upon information and belief been repeated for all other Ladles locations: the owner was instructed by Ladles franchisor(s) regarding common compensation practices, and would thereafter promulgate the tip policies through the location manager. As such, each location's owner and manager knowingly permitted the tip policy, actively participated in it, and had actual power to pay employees, since they decided what the terms of their tip compensation were and executed the same daily.

55. Plaintiffs' damages are *inter alia* triple the amount of all tips not paid to them over the past three years, plus interest.

56. Defendants also should be required to pay Plaintiffs' costs and reasonable attorneys' fees for this claim.

COUNT II
(Class Action -- Breach of Contract)

57. Plaintiffs reallege and reincorporate all previous allegations as if fully incorporated herein.

58. Defendants had upon information and belief common hiring policies for Plaintiff Class Members.

59. Plaintiff Class Members each had an employment agreement with their respective Defendant Ladles restaurant locations, with upon information and belief identical terms.

60. Under said agreement, each Defendant was to pay its respective Plaintiffs wages consisting of an hourly wage plus their cash and charged tips.

61. Defendants breached their obligation to pay Plaintiffs charged tips.

62. Defendants' breaches proximately caused Plaintiffs to lose wages they were due.

63. Plaintiffs' damages consist in the charged tips Defendants failed to pay.

COUNT III
(Class Action -- Conversion)

64. Plaintiffs reallege and reincorporate all previous allegations as if fully incorporated herein.

65. As earners of charged tips, Plaintiffs had an interest in the tips Defendants withheld.

66. Defendants converted Plaintiffs' charged tips and retained them for their own gain.

67. Defendants did so without Plaintiffs' permission.

68. Plaintiffs' damages consist of the amounts of charged tips Defendants withheld plus interest from the dates of conversion.

WHEREFORE, Plaintiff, CRAIG CHAPPELL, on behalf of himself and Class Members, demands judgment against Defendants for unpaid tips, treble damages where applicable under applicable law, punitive damages, consequential damages, reasonable attorneys' fees and costs incurred in this action, and any and all further relief this Court deems just and appropriate.

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

DEMAND FOR JURY TRIAL

Plaintiff on behalf of himself and Class Members hereby demands a trial by jury.

Respectfully submitted, this 14th day of February, 2018.

Le Clercq Law Firm, P.C.

By: Benjamin Scott Whaley Le Clercq
708 South Shelmore, Suite 202
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Phone: 843 722-3523
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ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

VERIFICATION

I, Craig Chappell hereby consent to be party plaintiff in this action, and hereby declare under penalty of perjury, that I have reviewed all of the allegations contained in the Complaint, and that these allegations are true and correct to the best of my knowledge, understanding and belief.

Date: February 2, 2018

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

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. Craig Chappell, declare under penalty of perjury the following:

1. I was an hourly paid employee at Ladles Soups – James Island, LLC, ("Ladles James Island") located at 1175A Folly Road Charleston, SC 29412 from approximately February, 2015 to April 2015, and then from approximately August, 2015 to May, 2016.

2. While I was employed at Ladles James Island, there were approximately seven hourly food service employees.

3. While I was employed at Ladles James Island, it had a policy of withholding all credit card tips from all hourly paid food service employees.

4. I was an hourly paid food service employee at Ladles James Island and all of my credit card tips were withheld.

5. I became aware of this policy because I saw a ledger at Ladles James Island showing that credit card tips were not being paid to any hourly food service employees.

6. Based on my communications with other Ladles restaurant hourly food service employees, I believe withholding credit card tips from hourly food service employees is a policy at other Ladles locations as well.

7. I began pursuing this lawsuit in approximately May, 2016 and I am capable and committed to aggressively pursuing this litigation on behalf of the other class members who had credit card tips improperly withheld from them.

8. I am not aware of, nor can I imagine, any conflicts I could have with the interests in this lawsuit of any current or former Ladles employees who had credit card tips improperly withheld from them.

9. I could not be more pleased with my counsel, Ben LeClercq, Esq. In my experience working with him, he has been very knowledgeable and is always on top of everything. Mr. LeClercq was recommended to me by another attorney and I am aware of Mr. LeClercq's handling of other class action lawsuits.

10. I worked at Ladles James Island for approximately a year to a year and half. While I was working at Ladles James Island I viewed a ledger that showed that for an eleven day

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

period, there was a total of approximately $800.00 in credit card tips that should have gone to the hourly food service employees but did not.

11. Based on my knowledge and experience working at Ladles James Island, I believe that well over $100.00 in charged credit card tips were withheld from each hourly food service employee.

FURTHER AFFIANT SAYETH NAUGHT.

September 5, 2019

Craig Chappell

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

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ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-10-785
CRAIG CHAPPELL, on behalf of himself and others similarly situated, Plaintiff(s), v. Ladles Soups – James Island LLC; Ladlessoups, LLC; Ladles Soups At Cane Bay LLC; Ladles Soups At Citadel Mall LLP; Ladles Soups Calhoun LLC; Ladles Soups Cane Bay LLC; Ladles Soups Coosaw LLC; Ladles Soups Downtown Charleston, LLC; Ladlessoups Fresh Fields, LLC; Ladles Soups @ Freshfields Village, LLC; Ladlessoups Mainstreet, LLC; Ladles Soups Moncks Corner LLC; Ladlessoups Mount Pleasant, LLC; Ladles Franchise Development, LLC; Ladles Franchising Inc.; Ladles Fort Mill, LLC; Ladles Knightsville LLC; Ladles West Ashley; Teri Owens; Sue Allen, Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke, Stan Sutton, Carol Sutton, Jason Dalter, Kellie Henderson; Jane Doe 1-25 (Unknown Operating Company and Management Company Owners); John Doe 25-40 (Management Personnel) Defendants.	

AFFIDAVIT

I, Lani Charpia, declare under penalty of perjury the following:

1. I have been employed as an hourly paid employee at Ladles West Ashley located at 3125 Bees Ferry Rd., Charleston, SC 29414 since approximately February, 2018.

2. Currently, there are approximately five hourly paid food service employees at Ladles West Ashley.

3. In the year and a half that I have worked at Ladles West Ashley, I have seen approximately more than ten hourly paid food service employees come and go.

3. Ladles West Ashley has a policy of withholding all credit card tips from all hourly paid food service employees.

4. I am an hourly paid food service employee at Ladles West Ashley and all of my credit card tips have been withheld.

5. I am aware of the policy to withhold credit card tips because I have discussed the policy with other hourly paid employees at our regularly scheduled team meetings and they acknowledge that they do not receive credit card tips.

6. I have been instructed by my manager not to tell customers that servers do not get the tips.

7. I am capable and committed to aggressively pursuing this litigation on behalf of the other class members who had credit card tips improperly withheld from them.

8. I am not now aware of, nor do I believe I will later have, any conflicts with the interests in this lawsuit of any current or former Ladles employees who had credit card tips improperly withheld from them.

9. I have had regular communications with Ben LeClercq, Esq. regarding this lawsuit and my role in it and I believe that he has the competence and experience to adequately represent the interests of the Plaintiff class.

10. I have worked at Ladles West Ashley for approximately a year and half. I regularly see the end of day credit card reports and they show the amount of charged tips for the entire day. On a typical day, the amount of charged tips for the day is at least $100.

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

11. Based on my knowledge and experience working at Ladies West Ashley, I believe that well over $100.00 in charged credit card tips were withheld from each hourly food service employee.

FURTHER AFFIANT SAYETH NAUGHT.

September 9th, 2019

Lani Charpia

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-10-785
CRAIG CHAPPELL, on behalf of himself and others similarly situated, Plaintiff(s), LANIE CHARPIA, Applicant for Intervention v. Ladles Soups – James Island LLC; Ladlessoups, LLC; Ladles Soups At Cane Bay LLC; Ladles Soups At Citadel Mall LLP; Ladles Soups Calhoun LLC; Ladles Soups Cane Bay LLC; Ladles Soups Coosaw LLC; Ladles Soups Downtown Charleston, LLC; Ladlessoups Fresh Fields, LLC; Ladles Soups @ Freshfields Village, LLC; Ladlessoups Mainstreet, LLC; Ladles Soups Moncks Corner LLC; Ladlessoups Mount Pleasant, LLC; Ladles Franchise Development, LLC; Ladles Franchising Inc.; Ladles Fort Mill, LLC; Ladles Knightsville LLC; Ladles West Ashley; Teri Owens; Sue Allen, Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke, Stan Sutton, Carol Sutton, Jason Dalter, Kellie Henderson; Jane Doe 1-25 (Unknown Operating Company and Management Company Owners); John Doe 25-40 (Management Personnel) Defendants.	

MOTION TO INTERVENE

Lanie Charpia, ("Ms. Charpia"), by and through her undersigned attorneys, hereby moves this Court, pursuant to Rule 24 of the South Carolina Rules of Civil Procedure, for an Order in this

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

action allowing Ms. Charpia to intervene as a party for the purpose of protecting her right and interests in and to the subject matter of the pending litigation. This motion is based on Rule 24 and South Carolina case law confirming Ms. Charpia's entitlement to intervene in this action as a matter of right and in the alternative, as a matter of permission.

Rule 24(b)(2) of S.C.R.C.P. provides that anyone may be permitted to intervene in an action when an applicant's claim or defense and the main action have a question of law or fact in common [...] In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

To warrant intervention under rule 24(b)(2), the applicant should ordinarily show he has a claim or defense involving a question of law or fact common with the main action. *South Carolina Tax Com. v. Union County Treasurer*, 295 S.C. 257, 368 S.E.2d 72 (1988). Under Fed. R. Civ. P. 24(b), which is identical to the South Carolina Rule of Civil Procedure in all relevant respects, permissive intervention is wholly discretionary with a trial court, and a trial court will be reversed on appeal only for abuse of discretion. *Id.* In determining whether a party has a right to intervene in a suit, the court should consider the pragmatic consequences of the decision to permit or deny intervention and must examine each case in the context of its unique facts and circumstances). *Berkeley Elec.*, 302 S.C. at 189, 394 S.E.2d at 714. In exercising its discretion, the trial judge must be guided by the public policy underlying the rules of intervention which is that sound administrative procedure encourages the disposition of all claims or defenses in one action rather than a multiplicity of actions. *South Carolina Tax Com*, 295 S.C. at 257, 368 S.E.2d at 72. As explained earlier, whether granting a motion to intervene will delay or prejudice the rights of existing parties depends upon the timeliness of the motion, and the timeliness is assessed according

to the stage to which the action has progressed. *R & G Mortg. Corp. v. Fed. Home Loan Mortg. Corp.*, 584 F.3d 1, 8 (1st Cir. 2009)

Here, Ms. Charpia's claim and the main action have in common the following question of law: Ms. Charpia and other putative class members were entitled to credit card tips paid by customers and intended by customers for the staff, although wrongfully and deceptively withheld by the employers, which employers did not pay them their wage tips. By doing so, the employers violated the South Carolina Payment of Wages Act, and other applicable law, which law entitled them to the recovery of their earned wages in addition to damages. Also, Ms. Charpia's claim and the main action have in common a question of fact because the existing plaintiffs and Ms. Charpia worked for the same restaurant concept, Ladles Soup, though at different locations. See attached affidavit of Ms. Charpia, which confirms these facts, and also that Ladles directed its employees to lie to and deceive customers.

Moreover, intervention is important in this instance because defendants have previously attempted to obtain dismissal of one or more Ladles locations, and the addition of plaintiffs from other locations is important in establishing plaintiffs basis to proceed as a class, pursuant to a motion for class certification to be filed subsequently. Defendants have thwarted plaintiffs discovery requests, and have not responded to discovery, which seeks rightfully to discover additional facts, circumstances and employees who had credit card tips wrongfully withheld.

The granting of the permissive motion to intervene under rule 24(b)(2) will not unduly delay or prejudice the rights of the original parties since filing the motion at this stage of the proceeding when the parties are still in the discovery process can be considered timely. If it is timely, it cannot be deemed prejudicial to the rights of existing parties. Ms. Charpia respectfully request that this Court grant this Motion to Intervene as a party Plaintiff.

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

Respectfully submitted,

s/

Ben L. Le Clercq (S.C. Bar #65754)
David D. Ashley (S.C. Bar #76206)
Le Clercq Law Firm
Ben@LeClercqLaw.com
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708 South Shelmore Blvd. #202
Mount Pleasant, SC 29464
Phone (843) 722-3523
Counsel for Plaintiff

August 22, 2019
Mt. Pleasant, South Carolina

CERTIFICATE OF SERVICE

I, Debbie Mathews, certify that on August 22, 2019, a true and correct copy of the foregoing **MOTION FOR CONTINUANCE** was served upon counsel for Defendants, via electronic mail as follows:

Kerry Koon - kerrykoon@hotmail.com
M. Evan Lacke - elacke@lackelawfirm.com
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Paul B. Ferrera, III - paul@ferraralawfirm.net
Janel Ferrara - janel@ferraralawfirm.net
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131 E. Richardson Avenue
Summerville, SC 29483

Debbie Mathews

Debbie Mathews

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

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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.	

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."

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

FURTHER AFFIANT SAYETH NAUGHT.

August 22, 2019

Lani Charpia

Lani Charpia

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

A. No, but I knew all other Ladles paid higher rates than the average, too. I mean, I just knew that.

Q. Okay. So that's just something that each one does?

A. Uh-huh. Uh-huh.

Q. But how is it that they all came about to do that -- do that type of pay rate?

A. I don't know.

Q. And when you talk about rates with them, do you talk about tips with them?

A. Yes. There is a -- all the cash tips -- and this was -- the employees decided this, and I said the cash tips are yours. So you guys split them however you see fit. If you want to share them with the kitchen, you share them with the kitchen. If you don't want to share them with the kitchen, it's up to you. They decided we're going to share them with everyone who works that day.

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.

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

Q. Okay. And he -- hourly employees, they don't get the credit card tips?

A. Well, they get it in their -- in their payroll. I mean, that's how I make payroll, because a lot of times the business percentages don't work out to be able to pay people at the higher levels.

Q. Okay. So do you -- you take the credit card tips and then you --

A. Transfer it into payroll accounts to make payroll.

Q. Right, but you're not transferring it to them individually as tips; you're just adding that to your gross sales, and then you pay them out of?

A. Uh-huh.

Q. Your regular payroll?

A. Yes.

Q. Okay. And when you pay them, you know, you don't have any -- there's no -- what sort of information is on their paychecks? Obviously, their name?

A. Their hourly rate, yes, and their year to dates and their taxes and everything that comes out of that.

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

Q. Okay. And 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. And that is discussed that they don't get the credit card tips, but they get the cash tips as an added bonus to their hourly wage, because we don't have designated servers here, because if we did that, then those people up front would no longer be -- they wouldn't -- they're not supposed to work in the back anymore, and that defeats our whole concept and our whole teamwork.
Q. Right. Well, do you have a tip pooling policy?
A. No.
Q. Where you just put all the tips into and it can just get divvied up between the people on the shift?
A. No, there's no policy for that.
Q. With the cash tips then, how do you decide who gets that?

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

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.

Q. And do you tell the employees this?

A. Yes. That's in the document that they sign, pretty much, that they're -- that they don't get the credit card tips. That's discussed with every single employee manual that gets signed.

Q. Okay. But are they -- so is that put on their paycheck anywhere, the amount of tips that came in that they're not participating in?

A. No, because it's not theirs. Once you opt out of becoming a non-tipped employee, then you're no longer -- I don't track what you would have made had you been it, because your hourly rate is then different.

Q. Okay. And just when you say you opt out of being a tipped employee, what do you mean by that?

A. Well, we explain to them that we're not -- that we're hiring a non-tipped employee. So by agreeing to that, therefore opting out of being a tipped employee.

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

Q. And when you first started was -- how much -- and you had salaried employees, correct?

A. Yes.

Q. And how much did they make?

A. One made 500; one made 6- a week.

Q. Okay. And so how did you handle -- I assume that tips, whether they were cash or credit card, were coming in?

A. Yes.

Q. Okay. And how did you handle that?

A. The cash tips, they would split them. I really didn't have anything to do with that. The credit card tips were allotted to their hourly wage. It afforded us the ability to pay them a higher hourly -- hourly wage.

Q. Okay. So did they -- so that just went into a pool of -- just explain that to me again. So...

A. It gave us -- it was a subsidized -- the hourly rate that the employees made was subsidized by the tips.

Q. Okay. So when they got their paycheck, they didn't have an itemized amount for tips?

A. No, they did not.

Q. They didn't get a separate paycheck for

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

tips?

A. No, they did not.

Q. And I don't know, you may have given this information to your attorney. Do you know -- well, let me back up.

You opened up the Ladles in West Ashley in 2007?

A. '07.

Q. And you had it for how long?

A. Until 2017.

Q. Okay.

A. The end of the year.

Q. Do you know from, let's say 2015 to 2017, the amount of credit card tips that Ladles West Ashley was bringing in each year?

A. I do not.

Q. Okay. Is that an amount that you could find?

A. I'm sure.

Q. Okay. And you don't think with the records that you've given your attorney that that number is in there?

A. I don't know.

Q. Okay. Do you know what records you've given your attorney?

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

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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.	

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.

Exhibit G

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."

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ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

records that were -- she would walk out with $300 that day, charge tips. But they would divide the tips among everybody, the cooks; the cashiers; me, the grill cook; whoever was working. They dispersed it evenly, the cash only.

Q And when you say "they", now you're just talking about Ladles - James Island, correct?

A Yes, that's the only restaurant I worked at.

Q Now, all these other defendants -- let's just get this out of the way. All these other defendants, Ladles Coosaw, Ladles Main Street, Ladles Fresh Fields, really all the other defendants except for Ladles Soups - James Island, LLC, you don't have any knowledge that any of these other restaurants did anything, do you? You can answer.

A I'm not sure if I can.

Q Well, you're not allowed -- that's what I was talking to you about earlier, Craig. You're not allowed to ask your attorney.

A I was told, and it's hearsay, by my employee, Logan, that the only person or company that allowed the employees to collect all tips including charge was Mount Pleasant. And I wanted to exclude them if there was truth to that. But he told me -- my only knowledge was he told me that that was the franchise or the company

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

policy, that that's what all the restaurants did except Mount Pleasant.

Q Who was he, Logan?

A Yes.

Q Logan who?

A Simmons.

Q Who was Logan Simmons?

A He was my coworker. He's the one that got me the job, actually.

Q He did? Okay, great. Do you know where Logan lives?

A I haven't seen him -- I haven't seen anybody or talked to anybody since that day that I was fired.

Q Do you know Logan's phone number?

A No.

Q But you believe Logan to have worked at Ladles - James Island?

A Yes, he's been there since the day they opened.

Q What was his position?

A Same, he was everything.

Q So --

A They called him the poster child.

Q -- excluding what you were told, okay, I want to be clear, Craig, you don't have any direct knowledge

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

Q And help us, the attorneys, understand. Do you have any knowledge about any of these defendants other than Ladles Soups - James Island, LLC, that you've talked with me about?

A I don't know anything about any other restaurants but Ladles - James Island other than what I was told about the Mount Pleasant James Island -- or Mount Pleasant Ladles. And like I said, it was told by Logan, again, that they're the only ones that were allowed to get charge tips, for some city ordinance. That came from Logan, so I know it's hearsay. But, no, I don't know anything about -- I don't know another employee at another restaurant. I know nothing.

MR. RIDDELL: Paul, sorry, if I could interject. Since testimony is based on that (indicating), I just request that that be made an exhibit, whatever you handed to him, whatever he looked at.

MR. FERRARA: Sure, sure.

BY MR. FERRARA:

Q I guess we'll mark this as Exhibit No. 1 to your deposition.

(Chappell Deposition Exhibit No. 1 was marked for identification.)

(Recess taken.)

ELECTRONICALLY FILED - 2019 Oct 23 3:17 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

ELECTRONICALLY FILED - 2019 Oct 25 9:56 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON CRAIG CHAPPELL, on behalf of himself and others similarly situated, Plaintiff(s), v. Ladles Soups – James Island LLC; Ladlessoups, LLC; Ladles Soups At Cane Bay LLC; Ladles Soups At Citadel Mall LLP; Ladles Soups Calhoun LLC; Ladles Soups Cane Bay LLC; Ladles Soups Coosaw LLC; Ladles Soups Downtown Charleston, LLC; Ladlessoups Fresh Fields, LLC; Ladles Soups @ Freshfields Village, LLC; Ladlessoups Mainstreet, LLC; Ladles Soups Moncks Corner LLC; Ladlessoups Mount Pleasant, LLC; Ladles Franchise Development, LLC; Ladles Franchising Inc.; Ladles Fort Mill, LLC; Ladles Knightsville LLC; Ladles West Ashley; Teri Owens; Sue Allen, Tracy Allen, Steve Traeger, Erik Dyke, Julie Dyke, Stan Sutton, Carol Sutton, Jason Dalter, Kellie Henderson; Jane Doe 1-25 (Unknown Operating Company and Management Company Owners); John Doe 25-40 (Management Personnel) Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-10-00785 **MEMORANDUM IN SUPPORT OF DEFENDANTS LADLES SOUPS OF MOUNT PLEASANT, LLC'S, ERIK DYKE'S AND JULIE DYKE'S MOTION FOR SUMMARY JUDGMENT**

TO: PLAINTIFF AND HIS ATTORNEYS BEN LE CLERCQ, ESQ. AND DAVID D. ASHLEY, ESQ.:

Defendants Julie Dyke and Eric Dyke are the sole members and owners of Ladles Soups Mt. Pleasant, LLC (hereinafter "Ladles Mt. Pleasant"). Ladles Mt. Pleasant is a South Carolina Limited Liability Company that has a franchise agreement with the Ladles Franchise. Ladles Mt.

Pleasant is an independent Company and other than its Franchise Agreement and its duties under that Agreement, has no connection with the other Defendants. The Agreement does not address how a Franchisee such as Ladles Mt. Pleasant is to handle tips. There is no credible evidence in the record that Ladles Mount Pleasant improperly or illegally handled its tips.

Plaintiff has never worked for the Dykes and or Ladles Mt. Pleasant. Despite that, he filed suit on February 14, 2018 against the Dykes and Ladles Mt. Pleasant alleging without merit that they had failed to properly pay tips to their employees. Defendants timely answered the Complaint on June 14, 2018 and filed the answer with the Clerk on June 20, 2018. Plaintiff did not serve any discovery on Defendants until May 24, 2019, over fifteen (15) months after he filed suit and eleven (11) months after Defendants answered Plaintiff's Complaint. Plaintiff cannot now claim that it has not had ample opportunity for discovery. Further, Plaintiff admits that he never worked for Defendants and has no dealings with Defendants whatsoever. Plaintiff has not obtained class certification. There is no class of wronged employees. His request for the names and addresses of Defendants' employees has no relevancy to his claim of whether he or the other Plaintiff is owed tips or wages and is simply a fishing expedition to obtain names of people that Plaintiff will then ostensibly contact to see if they wish to be in a lawsuit that in and of itself has no basis in fact against these Defendants.

Further, in Plaintiff's deposition at page 61, l. 22 – page 62, l. 6, a copy of which is attached hereto, Plaintiff testified as follows to the tips:

> Q. As far as you know, Ladles Mount Pleasant was doing it right, as far as you know?
> A. As far as I was told.
> Q. Right. As far as you know?
> A. Correct.
> Q. As so any employees that worked for Ladles Mount Pleasant, as far as you know based on what you were told would have -- would not have any claims because they would have gotten their tips?
> A. Absolutely.

ELECTRONICALLY FILED - 2019 Oct 25 9:56 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

The simple fact is that in this case, there is nothing in the record to tie the Dykes individually or Ladles Mt. Pleasant to this suit. Plaintiff can point to nothing other than speculation. Plaintiff's argument is solely that because the Ladles Soup business where Plaintiff worked allegedly failed to properly pay tips to Plaintiff, Plaintiff is entitled to sue Defendants Julie and Eric Dyke individually and their independent LLC for withholding tips.

In fact, in an admission of candor, Plaintiff, in his deposition conceded that he "didn't want to include [Ladles Mt. Pleasant] period." See Plaintiff's deposition, page 60, l. 23, a copy of which is attached hereto. Defendants are dragged into this suit not because they have committed a tort or done anything wrong, but solely because they happen to share the Ladles name. There simply is no proof of wrong doing and Defendants are entitled to be dismissed from this lawsuit individually and corporately.

RESPECTFULLY SUBMITTED,

By: *s/P. Brandt Shelbourne*
P. Brandt Shelbourne, Esquire (SCB 15143)
SHELBOURNE LAW FIRM
131 E. Richardson Avenue
Summerville, SC 29483
(843) 871-2210
Attorney for Defendants Ladles Soups of Mount Pleasant, LLC, Erik Dyke and Julie Dyke

October 25, 2019
Summerville, South Carolina

ELECTRONICALLY FILED - 2019 Oct 25 9:56 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

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CERTIFICATE OF SERVICE

I, the undersigned, an employee of Shelbourne Law, do hereby certify that a true and correct copy of a *Memorandum in Support of Defendants Ladles Soups of Mount Pleasant, LLC's, Erik Dyke's and Julie Dyke's Motion For Summary Judgment* which this certificate is affixed was served upon the following parties via hard copy and/or electronic mail to the following:

Ben LeClercq, Esq. David D. Ashley, Esq. LeClerq Law Firm 708 South Shelmore Blvd., Ste.202 Mount Pleasant, SC, 29406 *Attorneys for Plaintiff*	Kerry Koon, Esq. 147 Wappoo Creek Dr., Ste. 203 Charleston, SC 29412 kerrykoon@hotmail.com *Attorney for Defendants, Ladles Franchising, Inc.; Ladessoups, LLC, and Tracy Allen*
Paul B. Ferrara, III, Esq. Ferrara Law Firm, PLLC 8887 Old University Blvd., Ste. 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*	M. Evan Lacke, Esq. Lacke Law Firm, LLC 147 Wappoo Creek Dr., Ste. 204 Charleston, SC 29412 *Attorney for Defendants, Ladles Franchising, Inc.; Ladessoups, LLC, and Tracy Allen*

Date: October 25, 2019

Yvonne Franklin, Paralegal to P. Brandt Shelbourne

ELECTRONICALLY FILED - 2019 Oct 25 9:56 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

EXHIBIT "A"

ELECTRONICALLY FILED - 2019 Oct 25 9:56 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

In The Matter Of:

CHAPPELL VS.

LADLES SOUPS - JAMES ISLAND, LLC, et al.

CRAIG H. CHAPPELL

May 14, 2019

Rose Reporting, Inc.

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or whatever it was. I don't remember.

Q Was Teri a part of that conversation?

A Oh, yeah.

Q Craig, I think that's all the questions I have at this time. I may circle back.

A Okay.

MR. FERRARA: Please answer any questions that the other attorneys may have.

THE WITNESS: Sure.

EXAMINATION

BY MR. SHELBOURNE:

Q Craig, I'm Brandt Shelbourne. We met a while ago. I represent three people, three companies, three entities, Julie and Erik Dyke and Ladles of Mount Pleasant. And I will tell you that we have alleged that the sole members of Ladlessoups Mount Pleasant are Julie and Erik Dyke. So they're the owners. You don't have anything to dispute that, do you?

A I don't even know them.

Q So you've talked a little bit about the fact that -- and I'm going to jump around -- about how you thought that Ladles Mount Pleasant was doing it right?

A And I didn't want to include you, period.

Q Yeah. And so tell me why are we included?

A I don't know.

ELECTRONICALLY FILED - 2019 Oct 25 9:56 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

Q So it's your understanding that Ladles of Mount Pleasant is doing it right, as far as you know?

A That's what I was told.

Q Told by Logan?

A Yes.

Q And you have nothing other than what Logan said --

A Absolutely.

Q Okay. And so if --

MR. RIDDELL: Sorry, what was the question?

A I don't know.

MR. RIDDELL: I would just ask that you please wait until the whole question is asked before you answer.

A Right. I'm sorry.

Q That's okay. I'll try to --

A The question was would I have included them?

Q Yeah.

A And I would say no. If you were doing it right, I don't think anybody should be included in something if they're not doing anything wrong.

Q As far as you know, Ladles Mount Pleasant was doing it right, as far as you know?

A As far as I was told.

Q Right. As far as you know?

ELECTRONICALLY FILED - 2019 Oct 25 9:56 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

A Correct.

Q And so any employees that worked for Ladles Mount Pleasant, as far as you know based on what you were told would have -- would not have any claims because they would have gotten their tips?

A Absolutely.

MR. RIDDELL: Objection. Calls for speculation.

BY MR. SHELBOURNE:

Q As far as you know?

A As far as I know.

Q I am going to ask you a little bit of background a little bit. Mr. Rodgers, is it John Rodgers is his name?

A Correct.

Q Okay. And does he have family in the area?

A No, a sister in Chapel Hill.

Q Is he employed?

A He's 89, sir.

Q Was he employed?

A Coast Guard.

Q Retired Coast Guard?

A Yes.

Q And were you ever in the service?

A No. I come from a military family, but no.

ELECTRONICALLY FILED - 2019 Oct 25 9:56 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

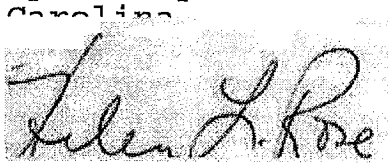
STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

I, Helen L. Rose, Certified Shorthand Reporter, Registered Professional Reporter, and Notary Public for the State of South Carolina at Large, do hereby certify that the witness in the foregoing deposition was by me duly sworn to testify to the truth, the whole truth and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and location therein stated; that the testimony of the witness and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed by computer-aided transcription; that the foregoing is a full, complete and true record of the testimony of the witness and of all objections made at the time of the examination.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Further, that at the time of said deposition the witness elected to reserve signature.

Witness my hand, I have hereunto affixed my official seal this 27th day of May, 2019, at Charleston, Charleston County, South Carolina.



Helen L. Rose
RPR #051505, CSR #084-003436 (IL)
My Commission expires
December 7, 2026.

ELECTRONICALLY FILED - 2019 Oct 25 9:56 AM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

ELECTRONICALLY FILED - 2019 Dec 23 9:57 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

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TO: ALL DEFENDANTS AND THEIR ATTORNEYS

YOU WILL PLEASE TAKE NOTICE that Plaintiffs, by and through their undersigned counsel, respectfully move this Court for an Order reconsidering the granting of summary judgment to Ladles Mount Pleasant. The judgment of the court was announced at motions hearing on October 29, 2019, and the court indicated that counsel for one or more Defendants should

ELECTRONICALLY FILED - 2019 Dec 23 9:57 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

prepare the order. Plaintiff has been waiting for the same to be filed prior to filing a motion to reconsider. However, undersigned counsel believes that no such order has been prepared. Given that additional motions have now been set for hearing on January 6, 2020, Plaintiff hereby submits this Motion to Reconsider and/or Alter or Amend the judgment.

Pursuant to SCRCP Rule 59, and or SCRCP 60, the judgment of the Court announced at the hearing held October 29, 2019 should be reconsidered and reversed. Undersigned counsel believes that the decision of the Court followed immediately upon a statement by opposing counsel that "Chappell did not work at the Ladles Mt Pleasant." At the time of granting summary judgment, the Court indicated that "this decision could change" depending on the Court's decision on Plaintiff's Motion for Class Certification.

To the extent that the Court's decision is based upon a perceived lack of standing of Chappell against Ladles Mt. Pleasant, counsel would respectfully refer the court to Attached **Exhibit A**, Plaintiffs proposed (and revised) Amended Complaint, which adds a count of Civil Conspiracy and allegations of "special damages", while clarifying and expanding upon the issue of standing. See, e.g, par. 81:

> For example, consider the case of the Ladles customer at the West Ashley location, who according to Charpia, has found out that Ladles retains credit card tips without paying them to servers. See Charpia, par. 6. It is indisputable that the great majority of customers now pay via credit card, and fewer and fewer people carry cash. Given the ubiquitous use of credit cards, many or most Ladles patrons therefore will tip, if at all, only by credit card. The West Ashley customer that finds out about the Ladles policy is less likely to leave a tip when they visit the Ladles *James Island* location, where Plaintiff Chappell worked, since they would believe that the James Island employees (like their West Ashley counterparts) don't get credit card tips ("*Why leave a tip when the employee won't get it?*"). In that manner, and even though Chappell works only at the James Island location, Chappell's wages and income have been reduced by the conspiratorial actions of the Operating Company Defendant that owns Ladles West Ashley, based on the "tips that were not left." Chappell has thereby been damaged by (and has standing to sue) the Ladles West Ashley Operating Company Defendant. The exact same thing can be said as to *all* Plaintiff class members and *all* Operating Company Defendants.

ELECTRONICALLY FILED - 2019 Dec 23 9:57 PM - CHARLESTON - COMMON PLEAS - CASE#2018CP1000785

For the foregoing reasons, the court should reconsider and reverse its prior judgment granting summary judgment to Ladles Mt. Pleasant.

_s/Ben Le Clercq (S.C. Bar #65754)
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Counsel for Plaintiff

Date: December 23, 2019
Mt. Pleasant, South Carolina

CERTIFICATE OF SERVICE

I, Debbie Matthews, certify that I served the foregoing **NOTICE OF CONVERTING MOTION TO INTERVENE INTO MOTION TO INTERVENE OR IN THE ALTERNATIVE AMEND COMPLAINT** upon opposing counsel, via email, this _____ day of September, 2019.

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s/Debbie Matthews

In The Matter Of:

CHAPPELL VS.

LADLES SOUPS - JAMES ISLAND, LLC, et al.

CRAIG H. CHAPPELL

May 14, 2019

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records that were -- she would walk out with $300 that day, charge tips. But they would divide the tips among everybody, the cooks; the cashiers; me, the grill cook; whoever was working. They dispersed it evenly, the cash only.

Q And when you say "they", now you're just talking about Ladles - James Island, correct?

A Yes, that's the only restaurant I worked at.

Q Now, all these other defendants -- let's just get this out of the way. All these other defendants, Ladles Coosaw, Ladles Main Street, Ladles Fresh Fields, really all the other defendants except for Ladles Soups - James Island, LLC, you don't have any knowledge that any of these other restaurants did anything, do you? You can answer.

A I'm not sure if I can.

Q Well, you're not allowed -- that's what I was talking to you about earlier, Craig. You're not allowed to ask your attorney.

A I was told, and it's hearsay, by my employee, Logan, that the only person or company that allowed the employees to collect all tips including charge was Mount Pleasant. And I wanted to exclude them if there was truth to that. But he told me -- my only knowledge was he told me that that was the franchise or the company

policy, that that's what all the restaurants did except Mount Pleasant.

Q Who was he, Logan?

A Yes.

Q Logan who?

A Simmons.

Q Who was Logan Simmons?

A He was my coworker. He's the one that got me the job, actually.

Q He did? Okay, great. Do you know where Logan lives?

A I haven't seen him -- I haven't seen anybody or talked to anybody since that day that I was fired.

Q Do you know Logan's phone number?

A No.

Q But you believe Logan to have worked at Ladles - James Island?

A Yes, he's been there since the day they opened.

Q What was his position?

A Same, he was everything.

Q So --

A They called him the poster child.

Q -- excluding what you were told, okay, I want to be clear, Craig, you don't have any direct knowledge

Q And help us, the attorneys, understand. Do you have any knowledge about any of these defendants other than Ladles Soups - James Island, LLC, that you've talked with me about?

A I don't know anything about any other restaurants but Ladles - James Island other than what I was told about the Mount Pleasant James Island -- or Mount Pleasant Ladles. And like I said, it was told by Logan, again, that they're the only ones that were allowed to get charge tips, for some city ordinance. That came from Logan, so I know it's hearsay. But, no, I don't know anything about -- I don't know another employee at another restaurant. I know nothing.

MR. RIDDELL: Paul, sorry, if I could interject. Since testimony is based on that (indicating), I just request that that be made an exhibit, whatever you handed to him, whatever he looked at.

MR. FERRARA: Sure, sure.

BY MR. FERRARA:

Q I guess we'll mark this as Exhibit No. 1 to your deposition.

(Chappell Deposition Exhibit No. 1 was marked for identification.)

(Recess taken.)

or whatever it was. I don't remember.

Q Was Teri a part of that conversation?

A Oh, yeah.

Q Craig, I think that's all the questions I have at this time. I may circle back.

A Okay.

MR. FERRARA: Please answer any questions that the other attorneys may have.

THE WITNESS: Sure.

EXAMINATION

BY MR. SHELBOURNE:

Q Craig, I'm Brandt Shelbourne. We met a while ago. I represent three people, three companies, three entities, Julie and Erik Dyke and Ladles of Mount Pleasant. And I will tell you that we have alleged that the sole members of Ladlessoups Mount Pleasant are Julie and Erik Dyke. So they're the owners. You don't have anything to dispute that, do you?

A I don't even know them.

Q So you've talked a little bit about the fact that -- and I'm going to jump around -- about how you thought that Ladles Mount Pleasant was doing it right?

A And I didn't want to include you, period.

Q Yeah. And so tell me why are we included?

A I don't know.

Q So it's your understanding that Ladles of Mount Pleasant is doing it right, as far as you know?
A That's what I was told.
Q Told by Logan?
A Yes.
Q And you have nothing other than what Logan said --
A Absolutely.
Q Okay. And so if --
MR. RIDDELL: Sorry, what was the question?
A I don't know.
MR. RIDDELL: I would just ask that you please wait until the whole question is asked before you answer.
A Right. I'm sorry.
Q That's okay. I'll try to --
A The question was would I have included them?
Q Yeah.
A And I would say no. If you were doing it right, I don't think anybody should be included in something if they're not doing anything wrong.
Q As far as you know, Ladles Mount Pleasant was doing it right, as far as you know?
A As far as I was told.
Q Right. As far as you know?

A Correct.

Q And so any employees that worked for Ladles Mount Pleasant, as far as you know based on what you were told would have -- would not have any claims because they would have gotten their tips?

A Absolutely.

MR. RIDDELL: Objection. Calls for speculation.

BY MR. SHELBOURNE:

Q As far as you know?

A As far as I know.

Q I am going to ask you a little bit of background a little bit. Mr. Rodgers, is it John Rodgers is his name?

A Correct.

Q Okay. And does he have family in the area?

A No, a sister in Chapel Hill.

Q Is he employed?

A He's 89, sir.

Q Was he employed?

A Coast Guard.

Q Retired Coast Guard?

A Yes.

Q And were you ever in the service?

A No. I come from a military family, but no.

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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A. No, but I knew all other Ladles paid higher rates than the average, too. I mean, I just knew that.

Q. Okay. So that's just something that each one does?

A. Uh-huh. Uh-huh.

Q. But how is it that they all came about to do that -- do that type of pay rate?

A. I don't know.

Q. And when you talk about rates with them, do you talk about tips with them?

A. Yes. There is a -- all the cash tips -- and this was -- the employees decided this, and I said the cash tips are yours. So you guys split them however you see fit. If you want to share them with the kitchen, you share them with the kitchen. If you don't want to share them with the kitchen, it's up to you. They decided we're going to share them with everyone who works that day.

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.

Q. Okay. And he -- hourly employees, they don't get the credit card tips?

A. Well, they get it in their -- in their payroll. I mean, that's how I make payroll, because a lot of times the business percentages don't work out to be able to pay people at the higher levels.

Q. Okay. So do you -- you take the credit card tips and then you --

A. Transfer it into payroll accounts to make payroll.

Q. Right, but you're not transferring it to them individually as tips; you're just adding that to your gross sales, and then you pay them out of?

A. Uh-huh.

Q. Your regular payroll?

A. Yes.

Q. Okay. And when you pay them, you know, you don't have any -- there's no -- what sort of information is on their paychecks? Obviously, their name?

A. Their hourly rate, yes, and their year to dates and their taxes and everything that comes out of that.

In the Matter Of:

Craig Chappell vs
Ladles Soups, et al.

Corey Paul 30b6 Ladles West Ashley

September 13, 2019

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Q. Okay. And 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. And that is discussed that they don't get the credit card tips, but they get the cash tips as an added bonus to their hourly wage, because we don't have designated servers here, because if we did that, then those people up front would no longer be -- they wouldn't -- they're not supposed to work in the back anymore, and that defeats our whole concept and our whole teamwork.
Q. Right. Well, do you have a tip pooling policy?
A. No.
Q. Where you just put all the tips into and it can just get divvied up between the people on the shift?
A. No, there's no policy for that.
Q. With the cash tips then, how do you decide who gets that?

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.

Q. And do you tell the employees this?

A. Yes. That's in the document that they sign, pretty much, that they're -- that they don't get the credit card tips. That's discussed with every single employee manual that gets signed.

Q. Okay. But are they -- so is that put on their paycheck anywhere, the amount of tips that came in that they're not participating in?

A. No, because it's not theirs. Once you opt out of becoming a non-tipped employee, then you're no longer -- I don't track what you would have made had you been it, because your hourly rate is then different.

Q. Okay. And just when you say you opt out of being a tipped employee, what do you mean by that?

A. Well, we explain to them that we're not -- that we're hiring a non-tipped employee. So by agreeing to that, therefore opting out of being a tipped employee.

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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Q. And what did you do when you left Belk?
A. I didn't work. Stayed home with our youngest for a couple of years.
Q. And so what did you do after that?
A. After the two years of staying home, I went -- when our youngest started school, I went back to Belk part-time and just worked mornings in like the shipping and receiving department.
Q. Okay. And how long did you do that for?
A. About -- probably about a year.
Q. Okay.
A. And then I started at Ladles Summerville.
Q. Okay. Do you remember what year you started at Ladles Summerville?
A. 2009.
Q. And was that already up and running?
A. Yes.
Q. Or you started it?
A. It was up and running.
Q. So you purchased it from someone?
A. No, I was an employee there.
Q. Oh, you started at Ladles?
A. Uh-huh.

Q. Okay. I got you. And that was in 2009?
A. Yes.
Q. Okay. And what did you do at Ladles Summerville?
A. I was the front of house. You could call it a manager, I guess.
Q. Okay.
A. Served customers.
Q. Were you paid salary?
A. Yes.
Q. Okay. And who owned it at the time?
A. As far as I know, it was Suzie Allen and Bob and Michelle Smith. They were partners of some kind.
Q. And how long did you work at Ladles in Summerville?
A. Close to one year.
Q. Okay. And did you do any of the bookkeeping?
A. No.
Q. Anything like that for them?
A. Huh-uh.
Q. You just did the management? Were you the manager?

A. I think they called me that, but I was -- I was an employee. I ladled soup and rang up customers.

Q. I got you.

A. So...

Q. And you did that for a year, so from about 2009, 2010?

A. Right.

Q. And as far as you know, Suzie Allen owned it when you ran it?

A. She was in partnership with the Smiths, yes.

Q. And so in 2010, what did you do?

A. I moved to the West Ashley Ladles.

Q. And what did you do there?

A. Same thing.

Q. Salaried employee?

A. Yes.

Q. And Suzie Allen owned that?

A. Yes.

Q. Okay. And so how long were you there?

A. Until we opened our Ladles in November of that year.

Q. So you started at Ladles in West Ashley in 2010. And then do you remember around generally

what month that would have been?
A. What month --
Q. That you started at Ladles West Ashley?
A. It was January.
Q. Okay. January. And then January of 2010 and then November of 2010 you --
A. We opened our own Ladles in Mount Pleasant.
Q. And why did you move from the Summerville to the West Ashley location?
A. The Smiths let me go.
Q. When you say -- what do you mean by --
A. They fired me.
Q. Okay. For what? Why?
A. They didn't like me. We couldn't come to an agreement on how to run the business.
Q. Okay.
A. So...
Q. And remind me again, there's two Smiths?
A. Yes.
Q. Okay. And what were their names?
A. Bob and Michelle.
Q. Bob and Michelle Smith. And did they own any other Ladles locations?

A. No.
Q. And they didn't have any connection with Ladles West Ashley?
A. No.
Q. Okay. So they let you go and Suzie was like, you know, come work at West Ashley?
A. Yes.
Q. Okay. And it was just a personality issue that they had?
A. Yes.
Q. And so you worked at Ladles West Ashley from 2010 until November '10?
A. Uh-huh, yes.
Q. And how did it come about that you opened the Ladles Mount Pleasant? Now, did somebody -- did you buy Ladles Mount Pleasant or did you open it from scratch?
A. From scratch.
Q. Okay. And can you just walk me through the -- you know, how is it that you came to do that or decide to do that?
A. Well, Suzie knew that I was a good employee and that I wanted to open my own business. So that's how we started. When they let me go, I -- I loved the business and I wanted to open my

A. After I was there a couple of months, she started giving us credit card tips, but I'm not sure who all got credit card tips.

Q. And how did she give you those credit card tips?

A. She -- I'm trying to remember. I don't remember. I want to say she wrote us a check for them.

Q. Okay.

A. When I say us, I -- she wrote me a check. I don't know who else was included in that, because we all worked at other -- everybody was kind of moving between locations then. The same employees --

Q. Moving between locations?

A. Yes.

Q. Which locations?

A. Kiawah Island and West Ashley.

Q. Okay. And at Kiawah Island, what was the policy regarding credit card tips?

A. I was paid by West Ashley, but I worked at -- you know, we got one salary, but we would work some shifts there and some shifts at West Ashley.

Q. Who owned Kiawah? When you would work

payment?

A. Kitchen, right now everybody comes in at 12.

Q. Okay. That's what they start out at?

A. Yes.

Q. Okay. And then do people in the kitchen do up front work?

A. Yes.

Q. And vice versa?

A. Yes.

Q. And so if you've got experience or if you've been working there for a while, is there a next level after $10 and $12?

A. I mean, pretty much what we do at our Ladles is every year if they're still there, they get another dollar an hour. And this is the time of year, so they're all getting ready to get bumped up a dollar.

Q. So, if somebody, if they stay on long enough, they keep moving up --

A. Uh-huh.

Q. -- to a different -- okay.

What do y'all do with the credit card tips?

A. The end of each month, they're written

a separate check. It's distributed among all the employees based on how many hours they work.

Q. And does that include the hourly employees?

A. Everyone is hourly.

Q. Everyone is -- you don't have any salaried 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.

Q. And how is it that you decided to do that policy, as opposed to keeping the credit card tips?

A. Well, since everyone is a team and we all work together, we just -- that seemed the fairest way. We pool the cash, so they pool everything -- we pool it all.

Q. I got you. Are you an hourly paid employee?

A. No.

Q. Do you take a salary?

A. We take a draw when we need to, but,

policy wages with any other owners -- Ladles owners?

A. I mean, not really. We've had meetings in the past where it's come up within a group.

Q. And what kind of meetings are these?

A. Well, when we first opened, we had -- of course, there weren't that many stores then. There were only four or five stores. But we used to have meetings like once or twice a year with the owners.

Q. Okay. And when you say owners, who do you --

A. Other Ladles owners.

Q. And does that also include the franchising company?

A. Yes.

Q. Okay. And so y'all would have meetings how many times?

A. Once or twice a year. I think there were times we only had one a year.

Q. And at these meetings, there's been times where y'all discussed tipping policy, wages, that sort of thing?

A. Yes.

Q. And what was discussed?

A. It was mostly just about that the employees, you know, need to get the tips. So we're supposed to share the tips with the -- or give the tips to the employees.

Q. Okay. Were there owners that, you know, disagreed with that?

A. No.

Q. Are you aware of any Ladles locations where the policy is that they don't give the tips -- credit card tips to their employees?

A. I don't know what the other Ladles do really.

Q. But at these meetings, no owner stood up and said, well, I don't think that we should do that? We don't --

A. Not that I recall, no.

Q. Did any of the owners, you know, say we'll -- did you discuss how you would go about giving the credit card tips, whether it would be in a check, a separate check, or any other way to do it?

A. We discussed how we were going to be doing ours at the time. And that's all I can say. We said this is what we do. You know, it's always been kind of a weird area in a business like ours

In the Matter Of:

Craig Chappell vs
Ladles Soups, et al.

Sue Ellen Allen 30b6 Ladlessoups, LLC

September 18, 2019

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Q. And when you first started was -- how much -- and you had salaried employees, correct?
A. Yes.
Q. And how much did they make?
A. One made 500; one made 6- a week.
Q. Okay. And so how did you handle -- I assume that tips, whether they were cash or credit card, were coming in?
A. Yes.
Q. Okay. And how did you handle that?
A. The cash tips, they would split them. I really didn't have anything to do with that. The credit card tips were allotted to their hourly wage. It afforded us the ability to pay them a higher hourly -- hourly wage.
Q. Okay. So did they -- so that just went into a pool of -- just explain that to me again. So...
A. It gave us -- it was a subsidized -- the hourly rate that the employees made was subsidized by the tips.
Q. Okay. So when they got their paycheck, they didn't have an itemized amount for tips?
A. No, they did not.
Q. They didn't get a separate paycheck for

tips?

A. No, they did not.

Q. And I don't know, you may have given this information to your attorney. Do you know -- well, let me back up.

You opened up the Ladles in West Ashley in 2007?

A. '07.

Q. And you had it for how long?

A. Until 2017.

Q. Okay.

A. The end of the year.

Q. Do you know from, let's say 2015 to 2017, the amount of credit card tips that Ladles West Ashley was bringing in each year?

A. I do not.

Q. Okay. Is that an amount that you could find?

A. I'm sure.

Q. Okay. And you don't think with the records that you've given your attorney that that number is in there?

A. I don't know.

Q. Okay. Do you know what records you've given your attorney?

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:

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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.]

INDEX TO PROCEEDINGS

	PAGE
PROCEEDINGS	3
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT	
Remarks by Mr. Shelbourne	3
Remarks by Mr. Ashley	7
Remarks by Mr. Shelbourne	10
Reply by Mr. Ashley	13
Response by Mr. Shelbourne	13
CERTIFICATE OF THE COURT REPORTER	15

INDEX TO EXHIBITS

No exhibits were introduced

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

Ladles he can think of. He has never worked for Ladles Mount Pleasant. He's never worked for Julie and Eric Dyke and that's in the memo. Your Honor, I heard you earlier say that you haven't necessarily checked the emails. I have a memo we filed if I could hand it up.

THE COURT: Absolutely.

[Whereupon, Mr. Shelbourne proffers documents to the Court]

THE COURT: Thank you, sir.

MR. SHELBOURNE: Thank you. And Your Honor that memo contains excerpts from Mr. Dyke's deposition where he says as far as I know Ladles Soups Mount Pleasant didn't do anything wrong and hasn't done anything. But yet we're dragged into this lawsuit.

Your Honor, significantly this lawsuit was filed in February of 2018. In May 2019 we filed a Motion for Summary Judgment. About the same time we received discovery; from over a year later after filing suit was discovery served.

And they have -- one of the things they've asked in discovery is tell us all your employees' names and addresses. Well, they want to know, they want to subject our employees' private information so then I assume so they can go contact them and say hey, do you want to sue your employer. It's a fishing expedition, Your Honor.

Mr. Chappell has never had any relationship with my client. He's not ever been damaged by my client. And they're alleging some class action thing but there has never been a -- there is no class certification. There is no determination that there is a class that we would even be in the class.

And so we think we're entitled to summary judgment at this point in time as to all claims that they brought against Ladles Mount Pleasant. And again, I'm only representing Ladles Mount Pleasant and Julie and Eric Dyke.

THE COURT: All right. Give me one second and let me try to catch up because on the docket it says Ladles -- oh, it's just because it's the first one, Ladles Soups James Island. He just sued them all.

MR. SHELBOURNE: He sued them all. In for a penny, in for a pound I guess.

THE COURT: Okay.

[Whereupon, the Court reviews documents]

THE COURT: He got Cane Bay, Knightsville?

MR. SHELBOURNE: That's out in Summerville.

THE COURT: Oh. All right.

MR. SHELBOURNE: And so we haven't told them we objected to their interrogatory asking for who our employees are because it's akin to basically saying he

works for a restaurant in downtown Charleston and decides you know what? I wasn't paid proper tips so I'm going to sue all the restaurants in Charleston and I'm going to ask for all their employees' names because I think maybe they all might be doing something wrong. There is no evidence in the record whatsoever that Ladles Soups Mount Pleasant improperly paid or handled its tips. And they can't cite to anything that would support that.

And Your Honor they've taken my clients depositions. There is nothing in the record to show that and we think we're entitled to summary judgment at this point in time.

THE COURT: All right.

MR. SHELBOURNE: Thank you.

THE COURT: So the basis of the complaint is simply just a wage issue? I mean its improper wage I guess. And are they alleging that it is like a corporate standard or its somewhere in their like By Laws this is how we tip and pay?

MR. SHELBOURNE: They are -- I believe they are alleging that it's a corporate standard. The franchise agreement does not address how the franchisees are supposed to handle tips or wages. It's completely left silent and it's up to them. And that's what all the witnesses have testified to. From what we understand the way that -- this isn't a wait staff restaurant. This is

a restaurant where you go in and you order, there is like a little key pad that they put around and your sign your name. And there is a place where you can put tips. So if you put cash in the tips their argument is those all go to the employees. But at James Island apparently there may have been something else going on. There are several lawyers here to represent the other Defendants so I don't want to speak for them.

But that's not what -- we didn't do anything improper and they haven't been able to show anything improper and we think we're entitled to summary judgment as to their claims against Mount Pleasant and the Dykes.

THE COURT: Okay.

MR. SHELBOURNE: Who are, simply, the members of the LLC.

THE COURT: And the other attorneys are just waiting to see what I do here to make their determination on whether they are going to file it.

MR. SHELBOURNE: I think they just don't want to be hanging with me this morning.

THE COURT: Alrighty. All right, yes sir?

MR. ASHLEY: Thank you Your Honor, I'm David Ashley for Craig Chappell. The Ladles restaurant franchises they all have common policy of withholding credit card tips from their hourly paid employees. This is a policy

that originated with the founder of the franchise. It's something that has gone on from the beginning and it continues today at each of the locations. We've taken the depositions of four of them so far and they've all confirmed that they have the same policy. Do you have a copy of your memorandum?

THE COURT: Our computer is issued by the State so of course it doesn't work so it keeps going off. So yeah, let me take a look at it. She's pulling it up each time but then it just cuts off.

[Whereupon, Mr. Ashley proffers documents to the Court]

MR. ASHLEY: It says -- so far with the depositions that we've taken with the James Island location, the West Ashley location, the Fort Mill location they all have this policy. And it's possible that Mount Pleasant doesn't have this policy but we don't know right now because they have not responded to two of our discovery requests that would answer the question the easiest.

One of those is interrogatory number 26 which simply just asks for a list of employees for the past three years. The other is a request for production that simply asks for payroll records that show how they paid the tips. This is something they could produce within five minutes and you know they haven't done it yet. There is

also if you look at exhibit number G there is an affidavit from Lane Charpia [phonetic] who is an employee at Ladles West Ashley and her affidavit tells us that management there has told her when customers ask where the tips go to not tell them.

So we've got the -- I don't think that we're required to just take their word for it. We have a situation where at least one of the locations you know is telling their employees not to tell the customers where the tips go.

And I think that you know to -- and the other situation we have is that the bulk of the Defendants have not responded to our discovery requests at all. They are about five months past due. And I think it's a little disingenuous for one of the parties to claim that we can't prove that there is a common policy when a majority of the Defendants refuse to even engage in discovery.

And so our class action has been filed. It's pending with the Court. We believe ---

THE COURT: --- hold on. So you have filed to have this designated as a class action?

MR. ASHLEY: Yes, Your Honor. It is filed. It is pending with the Court. And the class is simply all the Ladles employees at all the Ladles locations who have not have their credit card tips paid to them.

THE COURT: So the allegation -- I'm not -- so the allegation that y'all are alleging is that Ladles keeps the tips, the owner's do?

MR. ASHLEY: Yes, sir.

THE COURT: All right. And then the cash tips is disbursed amongst the employees?

MR. ASHLEY: That's what they say and we don't have any reason to believe that it's not. Our main allegation is that they keep the credit card tips.

THE COURT: Okay. When did you file to have it certified as a class?

MR. ASHLEY: I believe it was in -- its exhibit C ---

MR. SHELBOURNE --- I believe Your Honor, September 11th.

THE COURT: All right. And how many people do you allege are going to be members of this class?

MR. ASHLEY: I believe it's over 75.

THE COURT: Okay. Mr. Shelbourne, what is your position as to -- I understand what you're saying is that hey, here's the employees; go put them in your class. I mean that's what you're saying by not answering the first interrogatory by saying here are the employees for the past three years. What's your position as to the other interrogatory that they are requesting?

MR. SHELBOURNE: Your Honor, it's a fishing expedition. They have no cause of action against my client, or clients. They have no claims against my clients. My clients are not alleged to have done anything wrong. And even if they were they don't have a relationship with the Plaintiff. The Plaintiff and even the other Plaintiff Ms. Charpia [phonetic] have never been employed by my client.

And so for them to do this it is no different from them suing Magnolias or Hank's or those people and saying hey, give us all your information because we want to see if your tip policies are appropriate or any other restaurant.

They could sue every restaurant in Charleston and say we want to do it because it is no relationship. They are simply saying because we have a Ladles name we must have some connection. But they haven't been able to show a connection.

Mr. Ashley says well there is the -- they are all doing it the same. That is simply not the case, Your Honor. They took Mr. and Mrs. Dyke's deposition and that is not what they said. They said they do turn over the tips, the credit card tips, through a bonus program to the employees. So there is no evidence to support their cause of action. But even if they were, even if our

client didn't do it properly again there is no past relationship between Mr. Chappell and my client. And now if they get a class certification I think that might change it. But at this point in time they haven't and we're entitled to summary judgment and to be out of this case.

My client is a small essentially a Mom and Pop sandwich shop that have been dragged through over a year and a half of litigation which is killing their business simply because we happen to have the name associated with a bunch of other businesses that he may have, Mr. Chappell may have had something to do with. And it is killing my client's business, Your Honor.

THE COURT: I agree with you. Whenever I asked when was the class filed that's what I was trying to get to. But you're obviously trying to get out before that happens.

MR. SHELBOURNE: We are, Your Honor. We think we should be out of it because there is no relationship with this -- if he wants to point at a franchise agreement and say this is what we're supposed to do that's fine. But the franchise agreement doesn't say that. And I can't prove a negative so ---

THE COURT: --- Mr. Ashley, what's your position as to that as to they don't have any -- I mean they don't

have any relationship with Mr. Chappell?

MR. ASHLEY: Well, they do have a relationship because if the franchisor is an employer under the act it has the same policy -- the Dykes worked for the original franchisor. You know they learned the business from them. They developed -- any of the policies that they have they developed from them.

What we've seen in the depositions is that almost every franchise owner originally worked with the original franchisor and they just took those policies and when they started their business just used those same policies.

THE COURT: All right.

MR. SHELBOURNE: It's not true.

THE COURT: I understand.

MR. SHELBOURNE: At the end they don't have any deposition testimony to support that and that's why -- this is a Motion for Summary Judgment. They've had over a year to do discovery ---

THE COURT: --- let me ask this question. Mr. Ashley, did Mr. Chappell work at the Ladles of Mount Pleasant?

MR. ASHLEY: He did not work at Ladles of Mount Pleasant.

THE COURT: All right. I'm going to grant your

motion. If you get it certified as a class, it will change things.

MR. SHELBOURNE: Thank you, Your Honor.

THE COURT: All right. Good luck to you.

MR. ASHLEY: Thank you.

THE COURT: Do you want a Form 4 or you want to do an order?

MR. SHELBOURNE: Form 4 is fine, Your Honor -- well, we'll do an order.

THE COURT: All right. You'll do it.

MR. SHELBOURNE: Thank you, Your Honor.

********END OF TRANSCRIPT OF RECORD********

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]