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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

WAYLON UNDERWOOD, on behalf of
himself and similarly situated employees,

Plaintiff,

v.

HARVEST MOORESTOWN LLC,

Defendant.

:
:
: 1:17-cv-00550-RMB-JS
:
: **ELECTRONICALLY FILED**
:
: Return Date: April 3, 2017
:
:
:

PLAINTIFF’S NOTICE OF MOTION FOR CONDITIONAL CERTIFICATION

PLEASE TAKE NOTE that on April 3, 2017, or as soon thereafter as the matter may be heard, in the Courtroom of The Honorable Renee Marie Bumb, United States District Court for the District of New Jersey, located at Mitchell H. Cohen Building & U.S. Courthouse, Fourth and Cooper Streets, Camden, New Jersey, Plaintiff Waylon Underwood (“Plaintiff”) and his counsel will move this Court, pursuant to Section 16(b) of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §216(b), for entry of an order conditionally certifying the following collective: All individuals who, during any time within the past three years, worked as servers and/or bartenders at Defendant’s Harvest Seasonal Grill & Wine Bar located in Moorestown, New Jersey.

This motion is based upon the accompanying Brief and such other argument as the Court may allow at a hearing on this motion.

Date: March 8, 2017

Respectfully submitted,

s/ R. Andrew Santillo

Peter Winebrake*

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Attorneys for Plaintiff

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	: Notice of Motion Date: April 3, 2017
HARVEST MOORESTOWN LLC,	:
Defendant.	:

**PLAINTIFF’S BRIEF IN SUPPORT OF HIS
MOTION FOR CONDITIONAL CERTIFICATION**

Date: March 8, 2017

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Plaintiff Waylon Underwood (“Plaintiff”) submits this brief in the hope of obtaining “conditional certification” of the following Fair Labor Standards Act (“FLSA”) collective: All individuals who, during any time within the past three years, worked as servers and/or bartenders at Defendant’s Harvest Seasonal Grill & Wine Bar located in Moorestown, New Jersey.

The FLSA’s conditional certification standard is not difficult for employees to satisfy. *See infra* at Sections III.A-B. Under the applicable “modest factual showing” standard, an FLSA plaintiff merely is required to “produce some evidence, ‘beyond pure speculation,’ of a factual nexus between the manner in which the employer’s alleged policy affected her and the manner in which it affected other employees.” *Symczyk v. Genesis Healthcare Corporation*, 656 F.3d 189, 192 (3d Cir. 2011). As discussed below, Plaintiff satisfies this standard.

I. FLSA CONDITIONAL CERTIFICATION MOTIONS SHOULD BE DECIDED QUICKLY.

Plaintiff respectfully suggests that this FLSA conditional certification motion seeking to send notice of this lawsuit to Defendant’s other servers and bartenders should be decided quickly. As district courts have repeatedly recognized, “‘time [is] of the essence’ for purposes of FLSA notice ‘[b]ecause the . . . statute of limitations is not tolled [until] a potential plaintiff opts in[to]’ the proposed collective action.” *Taylor v. Pittsburgh Mercy Health System, Inc.*, 2009 U.S. Dist. LEXIS 40080, *2 (W.D. Pa. May 11, 2009); *see also Altenbach v. The Lube Center, Inc.*, 2009 U.S. Dist. LEXIS 106131, *2-3 (M.D. Pa. Nov. 13, 2009) (“district courts have allowed the conditional certification of a class of putative plaintiffs before significant discovery takes place because the statute of limitations continues to run on unnamed class members’ claims until they opt into the collective action”); *Gortat v. Capala Bros.*, 2010 U.S. Dist. LEXIS 35451, *30 (E.D.N.Y. Apr. 9, 2010) (“Because the statute of limitations for FLSA claims continues to run for each individual plaintiff until he or she opts in, *see* 29 U.S.C. § 256(b), early certification

and notice are favored in order to protect plaintiffs' rights.”).

II. BACKGROUND

A. Plaintiff Challenges a Common Set of Pay Policies.

Defendant owns and operates a Harvest Seasonal Grill & Wine Bar located in Moorestown, New Jersey (“the Moorestown Restaurant”). *See* Complaint (Doc. 1) at ¶ 8. During the past three-years, Defendant, upon information and belief, has employed well over 50 individuals as servers and/or bartenders at the Moorestown Restaurant. *Id.* at ¶ 9. The servers and bartenders are primarily responsible for taking customers’ food and drink orders, serving food and drinks to customers, and otherwise waiting on customers at the restaurant tables. *Id.* at ¶ 10.

Plaintiff alleges that during the relevant time period, Defendant paid servers and bartenders at the Moorestown Restaurant an hourly wage of only \$2.13. *Id.* at ¶ 12. In seeking to comply with the requirement under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201, *et seq.* that employees receive a minimum wage of \$7.25/hour and the New Jersey State Wage and Hour Law (“NJWHL”), N.J.S.A. 34:11-56A, *et seq.* requirement that employees receive a minimum wage of \$8.38/hour, Defendant has purported to utilize a “tip credit” for each hour worked by its servers and bartenders. *Id.* at ¶ 13. Under the FLSA, Defendant enjoyed the benefit of a \$5.12/hour tip credit (\$7.25 minus \$2.13). *Id.* Meanwhile, under the NJWHL, Defendant took a \$6.25/hour tip credit (\$8.38 minus \$2.13) against its minimum wage obligations. *Id.*

Plaintiff further alleges that Defendant has maintained a common policy at the Moorestown Restaurant of requiring servers to contribute a portion of their tips to a “tip pool” from which other restaurant employees called “Expeditors” (a.k.a. “Expos”) received money. *Id.*

at ¶ 14.

B. Plaintiff's Common Legal Challenge to Defendant's Uniform Tip Credit and Tip Pooling Practices at the Moorestown Restaurant.

This lawsuit concerns the interplay between Defendant's "tip credit" and "tip pooling" practices at the Moorestown Restaurant. The FLSA allows: (i) a restaurant to utilize customer tips to satisfy a portion of its minimum wage obligations to servers and bartenders; and (ii) "the pooling of tips" among restaurant employees. *See* 29 U.S.C. § 203(m). But there's a catch: restaurants utilizing tips to satisfy their minimum wage obligations may not allow tip pool proceeds to be shared with restaurant employees who do not "customarily and regularly receive tips." 29 U.S.C. § 203(m).

Plaintiff alleges that employees at the Moorestown Restaurant who worked as Expeditors had no direct interaction with customers. *See* Complaint (Doc. 1) at ¶¶ 15-17. According to Plaintiff, Defendant violated the minimum wage provisions of the FLSA and NJWHL by taking the tip credit against the minimum wage while requiring servers and bartenders to share their tips through the tip pool with Expeditors who do not directly interact with restaurant customers. *Id.* at ¶¶ 26-35.

C. Declaration Testimony Confirms that All Servers and Bartenders are Subjected to the Common Pay Policies.

Since Plaintiff filed this suit in January 2017, fifteen (15) other servers/bartenders at the Moorestown Restaurant have consented to join the case pursuant to 29 U.S.C. § 216(b): Elaine Coleman, Jason Doherty, Ralph Fiochi, Patrick Gigliotti, Matthew Gosser, Natalie Hin, Neil Marquez, Louis Monte, Elizabeth Ovalle, Tianna Rolon, Joshua Saline, Benjamin Saltzburg, Daniel D. Spatucci, Gabriele Tamburri, and Judi Young. *See* Docs. 3-4, 6, 8-15. Four of these individuals (Elaine Coleman, Joshua Saline, Benjamin Saltzburg, and Gabriele Tamburri) have

signed sworn declarations confirming the factual assertions in Plaintiff's Complaint and attesting that, *inter alia*, he or she: (i) worked as a server at the Moorestown Restaurant; (ii) was paid \$2.13 per hour plus tips; and (iii) was required to share a portion of his or her tips with Defendant's Expeditors. *See* Exhibits A-D.

D. Defendant Acknowledges that Servers and Bartenders at the Moorestown Restaurant are Required to Share their Tips with Expeditors.

The allegations in Plaintiff's Complaint and the sworn declarations of four opt-ins is not the only evidence that members of the proposed collective are similarly situated. Defendant has also admitted that servers and bartenders at the Moorestown Restaurant were required to share their tips with Expeditors.

In a February 17, 2017 article in the Courier-Post discussing this lawsuit, the parent company to Defendant (the Dave Magrogan Group of West Chester, Pennsylvania) is quoted as saying that Expeditors at the Moorestown Restaurant "are an important part of our front of house service staff that qualify and deserve *to be tipped from the service* staff they support." Jim Walsh, Restaurants, Workers Clash Over Wage Suits, COURIER-POST, Feb. 17, 2017, *available at* <http://www.courierpostonline.com/story/news/local/south-jersey/2017/02/17/wage-suits-phily-diner-harvest-grill/98047726/> (last visited Feb. 28, 2017) (emphasis supplied). This quote confirms the assertions by Plaintiff and the four opt-in declarants that servers and bartenders are required to share their tips with Expeditors at the Moorestown Restaurant.

III. ARGUMENT

A. FLSA "Conditional Certification" Generally.

In *Steinberg v. TD Bank, N.A.*, 2012 U.S. Dist. LEXIS 89086, *11-20 (D.N.J. June 27, 2012) (Bumb, J.), this Court described the process for certifying FLSA collectives as follows:

Under 29 U.S.C. § 216(b), the FLSA authorizes employees to bring a claim on

behalf of other employees “similarly situated” who were affected by an employer’s common policy. *White v. Rick Bus Co.*, 743 F. Supp. 2d 380, 386 (D.N.J. 2010). Unlike class actions subject to Federal Rule of Civil Procedure 23, where each person within the class is presumed to be a member of the class unless he “opts-out,” collective actions under the FLSA require members of the class to “opt-in” to a civil action. See *La Chapelle v. Owens-Illinois, Inc.*, 513 F.2d 286, 288 (5th Cir. 1975).

In determining whether a suit should proceed as a collective action under the FLSA, most courts utilize a two-tiered analysis. *Symczyk v. Genesis HealthCare Corp.*, 656 F.3d 189, 192 (3d Cir. 2011). During the first stage, the court “makes a preliminary determination whether the employees enumerated in the complaint can be provisionally categorized as similarly situated to the named plaintiff.” *Id.* at 192-193 (citations omitted). The court does not consider the merits of the dispute at this time, and the plaintiff must only demonstrate that the potential class members’ “positions are similar, not identical,” to his own. *Sperling v. Hoffman-LaRoche, Inc.*, 118 F.R.D. 392, 405 (D.N.J. 1988), *aff’d in part, appeal dismissed in part sub nom. Sperling v. Hoffman-La Roche Inc.*, 862 F.2d 439 (3d Cir. 1988), *aff’d and remanded sub nom. Hoffmann-La Roche Inc. v. Sperling*, 493 U.S. 165, 110 S. Ct. 482, 107 L. Ed. 2d 480 (1989) (citations omitted); *Shakib v. Back Bay Rest. Grp., Inc.*, No. 10-CV-4564, 2011 U.S. Dist. LEXIS 124143, 2011 WL 5082106, at *2 (D.N.J. Oct. 26, 2011) (“The merits of the plaintiff’s claim need not be evaluated and discovery need not be completed in order for such notice to be granted and disseminated.”). Potential differences in damages calculations among members of the plaintiff class do not preclude conditional certification. *Shakib*, 2011 U.S. Dist. LEXIS 124143, 2011 WL 5082106, at *4 (citing *Sanchez v. La Cocina Mexicana, Inc.*, No. 09 Civ. 9072, 2010 U.S. Dist. LEXIS 66095, 2010 WL 2653303, at *1 (S.D.N.Y. July 1, 2010); *Elliott v. Amspec Servs., LLC*, No. 10-CV-6575, 2011 U.S. Dist. LEXIS 136503, 2011 WL 6002019, at *4 (D.N.J. Nov. 29, 2011) (“the necessity for calculation of damages on an individual basis should not preclude class determination *when the common issues which determine liability predominate*”) (citing *Holmes v. Pension Plan of Bethlehem Steel Corp.*, 213 F.3d 124, 137 (3d Cir. 2000) (emphasis in original).

To determine whether the proposed recipients of opt-in notices are similarly situated, the Third Circuit utilizes a “modest factual showing” standard. *Symczyk*, 656 F.3d at 192 (stating that the modest factual showing standard “best comports with congressional intent and with the Supreme Court’s directive that a court ‘ascertain[] the contours of [a collective] action at the outset’”) (quoting *Hoffmann-La Roche*, 493 U.S. at 172)). ***The modest factual showing analysis is performed using a lenient standard.*** See *Pereira v. Foot Locker, Inc.*, 261 F.R.D. 60, 64 (E.D. Pa. 2009) (using an “extremely lenient standard”); *Ritzer v. UBS Fin. Servs., Inc.*, No. 08-CV-01235, 2008 U.S. Dist. LEXIS 71635, 2008 WL 4372784, at *2 (D.N.J. Sept. 22, 2008) (utilizing a “fairly lenient standard”); *Shakib*, 2011 U.S. Dist. LEXIS 124143, 2011 WL 5082106, at *2 (stating a court’s determination “***typically results in conditional certification of a***

representative class”) (citing *Herring v. Hewitt Assocs., Inc.*, No. 06-267, 2007 U.S. Dist. LEXIS 53278, 2007 WL 2121693, at *2 (D.N.J. July 24, 2007).

Although this is a lenient standard, it does require “some evidence beyond mere speculation that the defendant’s policy affected other employees.” *Wright v. Lehigh Valley Hosp.*, No. 10-431, 2010 U.S. Dist. LEXIS 86915, 2010 WL 3363992, at *3 (E.D. Pa. Aug. 24, 2010); *see also Symczyk*, 656 F.3d at 193 (requiring a “factual nexus between the manner in which the employer’s alleged policy affected [the plaintiff] and the manner in which it affected other employees”); *Prise v. Alderwoods Grp., Inc.*, 817 F. Supp. 2d 651, 670 (W.D. Pa. 2011) (stating that members of a putative class must show that they “were together the victims of a single decision, policy or plan”); *Manning v. Goldbelt Falcon, LLC*, No. 08-3427, 2010 U.S. Dist. LEXIS 104029, 2010 WL 3906735, at *2 (D.N.J. Sept. 29, 2010) *reconsideration denied*, No. 08-3427, 2011 U.S. Dist. LEXIS 134241, 2011 WL 5828497 (D.N.J. Nov. 17, 2011) (holding that conditional certification is appropriate when “the plaintiff and the proposed representative class members allegedly suffered from the same scheme”); *Aquilino v. Home Depot, Inc.*, No. 04-CV-4100, 2006 U.S. Dist. LEXIS 66084, 2006 WL 2583563, at *2 (D.N.J. Sept. 6, 2006) (requiring a “factual nexus” between the named plaintiffs and potential opt-in plaintiffs).

Specifically, a plaintiff cannot rely solely on the allegations in the complaint, and must instead provide factual support in the form of pleadings, affidavits, deposition testimony, or other supporting documents. *See Anyere v. Wells Fargo, Co.*, No. 09-2769, 2010 U.S. Dist. LEXIS 35599, 2010 WL 1542180, at *2 (N.D. Ill. Apr. 12, 2010) (“A ‘modest factual showing’ . . . cannot be founded solely on allegations in the complaint; some factual support must be provided, such as in the form of affidavits, declarations, deposition testimony, or other documents.”); *White*, 743 F. Supp. 2d at 386 (stating that courts examine the pleadings and certifications submitted by plaintiff).

If, at this first stage, the plaintiff carries his burden, “the court will ‘conditionally certify’ the collective action for the purposes of notice and pretrial discovery.” *Symczyk*, 656 F.3d at 192-93.

In the second stage, after discovery and with a more substantial record, a court then determines “whether each plaintiff who has opted-in to the collective action is in fact similarly situated to the named plaintiff.” *Symczyk*, 656 F.3d at 193. At this second stage, the defendant can move to decertify the class, and the burden of proof on the plaintiff is higher than in the first stage. *Manning*, 2010 U.S. Dist. LEXIS 104029, 2010 WL 3906735, at *2. At this latter stage, the court considers whether individualized differences among the plaintiffs make the claims more suitable for individualized, as opposed to class, treatment. *See Bishop v. AT&T Corp.*, 256 F.R.D. 503, 509 n.7 (W.D. Pa. 2009) (finding that whether claims are

too individualized to be handled as a class is “relevant to determination of a stage two decertification issue after discovery has closed”); *Anyere*, 2010 U.S. Dist. LEXIS 35599, 2010 WL 1542180, at *3 (“[Defendant] will have the opportunity to argue that individualized determinations predominate at the second step of the certification process, after more extensive discovery has occurred.”); *Jirak v. Abbott Labs., Inc.*, 566 F. Supp. 2d 845, 850 (N.D. Ill. 2008) (“Defendant’s argument about dissimilarities in the class is more appropriately decided at step two, after it is known who the class will consist of, and after some of the factual issues can be fleshed out in discovery.”).

In stage two, if the court determines the opt-in plaintiffs are similarly situated, then the case may proceed to trial as a collective action. *Manning*, 2010 U.S. Dist. LEXIS 104029, 2010 WL 3906735, at *2. If the court determines that the plaintiffs are not similarly situated, then the class will be decertified or split into subclasses. *Id.*

Id. at *11-20 (emphasis supplied).

B. The Lenient Conditional Certification Standard.

In *Symczyk*, the Third Circuit held that conditional certification motions are dictated by a “modest factual showing” standard:

Under the “modest factual showing” standard, a plaintiff must produce some evidence, “***beyond pure speculation,***” of a factual nexus between the manner in which the employer’s alleged policy affected her and the manner in which it affected other employees. We believe the “modest factual showing” standard – which works in harmony with the opt-in requirement to cabin the potentially massive size of collective actions – best comports with congressional intent and with the Supreme Court’s directive that a court “ascertain[] the contours of [a collective] action at the outset.”

Symczyk, 656 F.3d at 192-93 (emphasis supplied; internal citations omitted).

New Jersey district courts have repeatedly recognized that the Third Circuit’s modest factual showing standard is “***fairly lenient***” and ““***typically results*** in conditional certification of a representative class.”” *Shakib*, 2011 U.S. Dist. LEXIS 124143, at *5 (quoting *Hering*, 2007 U.S. Dist. LEXIS 53278, at *13) (emphasis supplied); accord *Pearsall-Dineen v. Freedom Mortg. Corp.*, 27 F. Supp.3d 567, 570 (D.N.J. 2014); *Goodman v. Burlington Coat Factory*, 2012 U.S. Dist. LEXIS 16910, *14 (D.N.J. Nov. 20, 2012); *Ruffin v. Avis Budget Rental, LLC*,

2012 U.S. Dist. LEXIS 89651, *7 (D.N.J. June 28, 2012). As Judge Joseph Irenas recognized: “A showing that opt-in plaintiffs bring the same claims and seek the same relief has been considered sufficient for conditional certification.” *Pearsall-Dineen*, 27 F. Supp. 3d at 570.

The Middle District of Pennsylvania cogently described the reason for setting such a low bar for workers at the conditional certification stage:

The burden in this preliminary certification [stage] is light because the risk of error is insignificant: should further discovery reveal that the named positions, or corresponding claims, are not substantially similar the defendants will challenge the certification and the court will have the opportunity to deny final certification.

Craig v. Rite Aid Corp., 2009 U.S. Dist. LEXIS 114785, *9 (M.D. Pa. Dec. 9, 2009); *see also* *Mueller v. CBS, Inc.*, 201 F.R.D. 425, 429 (W.D. Pa. 2001) (“to require conclusive findings of ‘similar situations’ before providing notice . . . to absent class members ‘would condemn any large class claim . . . to a chicken and egg limbo in which the class could only notify all its members to gather after it had gathered together all its members’”).

Consistent with the above principles, courts deciding conditional certification motions are “careful not to delve into the merits of the case or determine issues of credibility.” *Outlaw v. Secure Health, L.P.*, 2012 U.S. Dist. LEXIS 108218, *8 (M.D. Pa. Aug. 2, 2012); *see also* *Steinberg*, 2012 U.S. Dist. LEXIS 89086, at *12 (“The court does not consider the merits of the dispute at [conditional certification], and the plaintiff must only demonstrate that the potential class members’ ‘positions are similar, not identical,’ to his own.”); *Adami v. Cardo Windows, Inc.*, 299 F.R.D. 68, 80 (D.N.J. 2014) (“Because a full evaluation of the merits is not appropriate at [the conditional certification] stage, it is sufficient that Plaintiffs share similar job duties and share a similar business relationship with Defendants.”); *Bowe v. Enviropro Basement Sys.*, 2013 U.S. Dist. LEXIS 170796, *13 (D.N.J. Dec. 4, 2013) (“The Court is cognizant that in deciding

Plaintiff's motion [for conditional certification], the Court is not being asked to evaluate the merits of Plaintiff's claimed FLSA violations."); *id.* at *16 n.6 ("To be clear, the Court is not, at this time, weighing the merits of the purported FLSA violations alleged in the amended complaint."); *Goodman*, 2012 U.S. Dist. LEXIS 16910, at *24 ("At this stage, the Court's role is not to evaluate the merits of Plaintiffs' claims[.]"); *Vargas v. General Nutrition Centers, Inc.*, 2012 U.S. Dist. LEXIS 154073, *12 (W.D. Pa. Oct. 26, 2012) ("[t]he thrust of the Court's inquiry at this juncture . . . 'is not on whether there has been an actual violation of the law'"); *Resch v. Krapf's Coaches*, 2012 U.S. Dist. LEXIS 89993, *6 (E.D. Pa. June 28, 2012) (merits "need not be evaluated"); *Shakib*, 2011 U.S. Dist. LEXIS 124143, at *6 ("The merits of the plaintiff's claim need not be evaluated and discovery need not be completed in order for [conditional certification] notice to be granted and disseminated.").

C. Because Plaintiff Satisfies the "Modest Factual Showing" Standard, Conditional Certification Should Be Granted.

Applying the "modest factual showing" standard, the Court should conditionally certify an FLSA collective consisting of: All individuals who, during any time within the past three years, worked as servers and/or bartenders at Defendant's Harvest Seasonal Grill & Wine Bar located in Moorestown, New Jersey.

Even in the absence of discovery, the record sufficiently demonstrates that Plaintiff and the putative collective of servers and bartenders at this single restaurant location are bound together by a common set of core facts. **First**, all potential opt-ins are covered by Defendant's common tip credit and tip pooling practices at the Moorestown Restaurant. *See* Section II.A. **Second**, all potential opt-ins are bound together by a common FLSA claim. *See* Section II.B. **Third**, four sworn declarations from servers at this single restaurant location confirm that all of the restaurant's servers and bartenders are bound together by the common tip pooling and tip

sharing practices challenged in this lawsuit.¹ *See* Section II.C. **Fourth**, Defendant has publically acknowledged that servers and bartenders at the Moorestown Restaurant are required to provide a portion of their tips to expos in accordance with company policy. *See* Section II.D.

Importantly, district courts frequently conditionally certify and order that notice be sent to similar collectives challenging a restaurant's inclusion of potentially ineligible employees in a tip pool. For example, in *Flood v. Carlson Rests., Inc.*, the Southern District of New York conditionally certified a collective of approximately 42,000 tipped workers at T.G.I. Friday's restaurants nationwide. *See* 2015 U.S. Dist. LEXIS 6608, *15 (S.D.N.Y. Jan. 20, 2015). As here, the *Flood* plaintiffs alleged, *inter alia*, that they were subjected to "mandatory tip pooling arrangement[s]," in which the tipped employees were required to share tips with workers who had limited or no interaction with customers, such as *expeditors* and silverware rollers." *Id.* at *8 (emphasis supplied).

Likewise, in *McCoy v. RP, Inc.*, the District of South Carolina conditionally certified a collective of employees at multiple restaurant locations who asserted similar claims that they were required to contribute a portion of their tips to a pool that included ineligible "back-of-the-house employees." 2015 U.S. Dist. LEXIS 142521, *11-12 (D.S.C. Oct. 19, 2015). The *McCoy* court relied on a single affidavit by a tipped employee at one restaurant location to authorize collective notice to the defendants' other tipped employees. *Id.*

These are just two examples of courts that have authorized notice to employees challenging a restaurant's use of the tip credit against their minimum wage obligations under the FLSA. Many other district courts across the country have agreed and conditionally certified

¹ These declarations compare favorably with other FLSA lawsuits that have been conditionally certified by Pennsylvania district courts. *See, e.g., Neal v. Air Drilling Associates, Inc.*, 2015 U.S. Dist. LEXIS 5554, *7 (M.D. Pa. Jan. 16, 2015) (4 declarations); *Williams v. Owens & Minor, Inc.*, 2009 U.S. Dist. LEXIS 102304, *4 (E.D. Pa. Oct. 9, 2009) (2 declarations).

similar collectives. *See, e.g., Fast v. Applebee's Int'l, Inc.*, 243 F.R.D. 360 (W.D. Mo. 2007); *Robbins v. Blazin Wings, Inc.*, 2016 U.S. Dist. LEXIS 35446 (W.D.N.Y. Mar. 18, 2016); *Walter v. Buffets Inc.*, 2015 U.S. Dist. LEXIS 82507 (D.S.C. June 25, 2015); *Alequin v. Darden Rests., Inc.*, 2013 U.S. Dist. LEXIS 99458 (S.D. Fla. July 12, 2013); *Haschak v. Fox & Hound Rest. Group*, 2012 U.S. Dist. LEXIS 162476 (N.D. Ill. Nov. 14, 2012); *Dorsey v. Greene Turtle Franchising, Corp.*, 2010 U.S. Dist. LEXIS 95791 (D. Md. Sep. 14, 2010); *Rousseau v. Frederick's Bistro, Ltd.*, 2010 U.S. Dist. LEXIS 34271 (W.D. Tex. Apr. 7, 2010).

In this action, Plaintiff seeks to conditionally certify a collective that is far more modest than the collectives conditionally certified in most of the cases referenced above. Indeed, Plaintiff in this case – unlike the plaintiffs in many of the above cases – limits the proposed collective to a single restaurant. Under these circumstances, conditional certification is clearly warranted.

IV. CONCLUSION

For the above reasons, Plaintiff requests that the Court grant this Motion and conditionally certify the proposed FLSA collective.

Date: March 8, 2017

Respectfully submitted,

s/ R. Andrew Santillo

Peter Winebrake*

R. Andrew Santillo (NJ ID #025512004)

Mark J. Gottesfeld, Esq. (NJ ID #027652009)

WINEBRAKE & SANTILLO, LLC

715 Twining Road, Suite 211

Dresher, PA 19025

(215) 884-2491

*admission *pro hac vice* anticipated

Attorneys for Plaintiff

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

WAYLON UNDERWOOD, on behalf of	:	
himself and similarly situated employees,	:	CIVIL ACTION
	:	
	:	No. 1:17-cv-00550-RMB-JS
Plaintiff,	:	
v.	:	
	:	
HARVEST MOORESTOWN LLC,	:	
	:	
Defendant.	:	

DECLARATION OF ELAINE COLEMAN

I, Elaine Coleman, hereby declare, subject to penalty of perjury, that the following information is true and correct to the best of my personal knowledge, information, and belief:

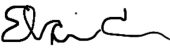
1. From approximately February 2015 until approximately May 2016, I worked as a Server at the Harvest Seasonal Grill & Wine Bar in Moorestown, New Jersey. I was paid \$2.13 per hour plus tips.
2. Throughout my employment at the Moorestown Harvest restaurant, I was required to pay a portion of my tips to the restaurant manager. The restaurant manager would collect my payment and distribute it to other restaurant employees. If an Expediter worked during my shift, the Expediter would receive a portion of the tips I paid to the restaurant manager.
3. Expediters did not wear Server uniforms and were stationed at the kitchen area. Expediters' job duties primarily consisted of readying food orders for pick-up by me and other Servers.

4. Expediters generally did not interact with restaurant customers and did not perform duties at customers' tables.

I DECLARE, SUBJECT TO PENALTY OF PERJURY, THAT THE ABOVE IS TRUE AND CORRECT TO THE BEST OF MY PERSONAL KNOWLEDGE, INFORMATION, AND BELIEF.

3/8/2017

Date

DocuSigned by:

6A37494F8F4E453

Signature

Exhibit B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

	:	
WAYLON UNDERWOOD, on behalf of	:	CIVIL ACTION
himself and similarly situated employees,	:	
	:	No. 1:17-cv-00550-RMB-JS
Plaintiff,	:	
v.	:	
	:	
HARVEST MOORESTOWN LLC,	:	
	:	
Defendant.	:	
	:	

DECLARATION OF JOSHUA SALINE

I, Joshua Saline, hereby declare, subject to penalty of perjury, that the following information is true and correct to the best of my personal knowledge, information, and belief:

1. From approximately April 2016 until approximately December 2016, I worked as a Server at the Harvest Seasonal Grill & Wine Bar in Moorestown, New Jersey. I was paid \$2.13 per hour plus tips.

2. Throughout my employment at the Moorestown Harvest restaurant, I was required to pay a portion of my tips to the restaurant manager. The restaurant manager would collect my payment and distribute it to other restaurant employees. If an Expediter worked during my shift, the Expediter would receive a portion of the tips I paid to the restaurant manager.

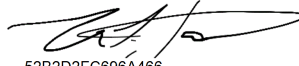
3. Expeditors did not wear Server uniforms and were stationed at the kitchen area. Expeditors' job duties primarily consisted of readying food orders for pick-up by me and other Servers.

4. Expediters generally did not interact with restaurant customers and did not perform duties at customers' tables.

I DECLARE, SUBJECT TO PENALTY OF PERJURY, THAT THE ABOVE IS TRUE AND CORRECT TO THE BEST OF MY PERSONAL KNOWLEDGE, INFORMATION, AND BELIEF.

2/22/2017

Date

DocuSigned by:

52B2D2EC696A466

Signature

Exhibit C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

WAYLON UNDERWOOD, on behalf of	:	
himself and similarly situated employees,	:	CIVIL ACTION
	:	
	:	No. 1:17-cv-00550-RMB-JS
Plaintiff,	:	
v.	:	
	:	
HARVEST MOORESTOWN LLC,	:	
	:	
Defendant.	:	
	:	

DECLARATION OF BENJAMIN SALTZBURG

I, Benjamin Saltzburg, hereby declare, subject to penalty of perjury, that the following information is true and correct to the best of my personal knowledge, information, and belief:

1. From approximately March 2015 until approximately February 2017, I worked as a Server at the Harvest Seasonal Grill & Wine Bar in Moorestown, New Jersey. I was paid \$2.13 per hour plus tips.

2. Throughout my employment at the Moorestown Harvest restaurant, I was required to pay a portion of my tips to the restaurant manager. The restaurant manager would collect my payment and distribute it to other restaurant employees. If an Expediter worked during my shift, the Expediter would receive a portion of the tips I paid to the restaurant manager.


3. Expediters did not wear Server uniforms and were stationed at the kitchen area. Expediters' job duties primarily consisted of readying food orders for pick-up by me and other Servers.

4. Expediters generally did not interact with restaurant customers and did not perform duties at customers' tables.

I DECLARE, SUBJECT TO PENALTY OF PERJURY, THAT THE ABOVE IS TRUE AND CORRECT TO THE BEST OF MY PERSONAL KNOWLEDGE, INFORMATION, AND BELIEF.

2/21/2017

Date

DocuSigned by:

4E11EDB4CC5440A

Signature

Exhibit D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

WAYLON UNDERWOOD, on behalf of	:	
himself and similarly situated employees,	:	CIVIL ACTION
	:	
	:	No. 1:17-cv-00550-RMB-JS
Plaintiff,	:	
v.	:	
	:	
HARVEST MOORESTOWN LLC,	:	
	:	
Defendant.	:	
	:	

DECLARATION OF GABRIELE TAMBURRI

I, Gabriele Tamburri, hereby declare, subject to penalty of perjury, that the following information is true and correct to the best of my personal knowledge, information, and belief:

1. From approximately April 2016 until approximately January 2017, I worked as a Server at the Harvest Seasonal Grill & Wine Bar in Moorestown, New Jersey. I was paid \$2.13 per hour plus tips.

2. Throughout my employment at the Moorestown Harvest restaurant, I was required to pay a portion of my tips to the restaurant manager. The restaurant manager would collect my payment and distribute it to other restaurant employees. If an Expediter worked during my shift, the Expediter would receive a portion of the tips I paid to the restaurant manager.

3. Expeditors did not wear Server uniforms and were stationed at the kitchen area. Expeditors' job duties primarily consisted of readying food orders for pick-up by me and other Servers.

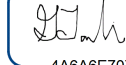
4. Expediters generally did not interact with restaurant customers and did not perform duties at customers' tables.

I DECLARE, SUBJECT TO PENALTY OF PERJURY, THAT THE ABOVE IS TRUE AND CORRECT TO THE BEST OF MY PERSONAL KNOWLEDGE, INFORMATION, AND BELIEF.

2/21/2017

Date

DocuSigned by:



4A6A6E70707943E

Signature

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

WAYLON UNDERWOOD, on behalf of	:	
himself and similarly situated employees,	:	1:17-cv-00550-RMB-JS
	:	
Plaintiff,	:	
v.	:	
	:	
HARVEST MOORESTOWN LLC,	:	
Defendant.	:	

ORDER

AND NOW, this ____ day of _____, 2017, upon consideration of Plaintiff’s “Motion for Conditional Certification” (“Motion”) and accompanying brief, Defendant’s response thereto, and all other papers and proceedings herein, it is hereby **ORDERED** that the Motion is **GRANTED** as follows:

1. This action is conditionally certified, pursuant to Section 16(b) of the Fair Labor Standards Act, 29 U.S.C. § 216(b), on behalf of the following collective: All individuals who, during any time within the past three years, worked as servers and/or bartenders at Defendant’s Harvest Seasonal Grill & Wine Bar located in Moorestown, New Jersey.¹

2. Within seven (7) days of the entry of this Order, the parties shall jointly submit to the Court proposed language for a notification form to be approved by the Court informing potential plaintiffs of their right to join this action as party plaintiffs. In drafting the proposed notification language, the parties should “be scrupulous to respect judicial neutrality” and “take care to avoid even the appearance of judicial endorsement of the merits of the action.” *Hoffman-LaRoche Inc. v. Sperling*, 493 U.S. 165, 174 (1989); and

¹ The Court recognizes that an earlier limitations period may apply to the claims of individuals who have already filed consent to join forms pursuant to 29 U.S.C. § 216(b).

3. Within fourteen (14) days after the entry of this Order, Defendant will produce to Plaintiff's counsel an Excel spreadsheet listing the name, last known address, and last known phone number of every individual falling within the collective, as defined in paragraph 1 above.

BY THE COURT:

Renee Marie Bumb, U.S.D.J.

CERTIFICATE OF SERVICE

The undersigned hereby certifies subject to the penalty of perjury that, on this date, the attached documents were served on the Defendant by delivering same to Defendant's counsel via electronic mail:

Steven Ludwig, Esq.
Fox Rothschild, LLP
2000 Market Street, 20th Floor
Philadelphia, PA 19103

Date: March 8, 2017

s/ R. Andrew Santillo
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Dresher, PA 19025
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Fx: (215) 884-2492